

AMENDED IN ASSEMBLY MARCH 24, 2009
AMENDED IN ASSEMBLY FEBRUARY 10, 2009
CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 33

Introduced by Assembly Member Nava

December 1, 2008

~~An act relating to financial services.~~ *An act to amend Sections 30, 31, 7500.3, 7502.1, 7502.2, 7522, 7582.2, 7742, 10003, 10004, 10005, 10071, 10082, 10131.3, 10146, 10147, 10149, 10150.6, 10151.5, 10153, 10159.2, 10175.2, 10176.1, 10177, 10225, 10231.2, 10232.1, 10232.2, 10232.4, 10232.25, 10236.2, 10239, 10249.3, 10249.8, 10249.9, 10451.5, 10470.1, 10471, 10471.5, 10472, 10501, 11000.1, 11000.2, 11001, 11003.4, 11010, 11011, 11012, 11018, 11018.1, 11018.2, 11018.7, 11212, 11225, 11232, 11243, 11302, 11314, 11315, 11315.5, 11316, 11317, 11318, 11325, 11326, 11327, 11328, 11340, 11341, 11344, 11350, 11352, 11360, 11361, 11400, 11401, 11406, 11407, 11408, 11409, 11412, 11422, 11502.5, 17511.1, 17537.2, and 20009 of, and to repeal Sections 10050, 10051, 10052, 10053, 10073, 10075, 10076, 10077, 10078, 10079, 10080, 11301, 11310, 11313 of, the Business and Professions Code, to amend Sections 163, 500, 1001, 1101.1, 1300, 2207, 7813.5, 8011.5, 12504, 12532, 13205, 13406, 13408.5, 14025, 15679.2, 15911.21, 17656, 23000, 25004, 25005, 25014.6, 25100, 25102, 25243.5, 25247, 25254, 25600, 25602, 25604, 25606, 25607, 25612.5, 25614, 25702, 28033, 28505, 28715, 29200, 29503, 31004, 31210, 31408, 31503, 31513 of, and to repeal Sections 25601, 25603, and 25620 of, the Corporations Code, to amend Sections 112, 200, 201, 210, 210.5, 215, 262, 1856, 4057, 4805.055, 4970, 4990, 5104, 12003, 12100, 12104, 12307.4, 14003, 14200.1, 14200.2, 14381, 17002, 17006, 17210.2, 17214, 17303, 17311, 17312, 17320, 17331,*

17423.1, 18002, 18002.5, 18339, 18427.9, 18596, 22005, 22159.5, 22160, 22304, 23001, 23070, 23071, 23072, 23073, 23074, 23102, 28000, 30002, 30005, 30217, 31055, 33045.5, 33785, 50003, 50303, 50307.1, 50602, 50702 of, and to add Sections 203 and 210.9 to, the Financial Code, and to amend Section 13975 of the Government Code, relating to financial services.

LEGISLATIVE COUNSEL'S DIGEST

AB 33, as amended, Nava. ~~Financial services.~~ *Department of Financial Services.*

Existing law establishes the Department of Financial Institutions, the Department of Corporations, the Department of Real Estate, and the Office of Real Estate Appraisers in the Business, Transportation and Housing Agency.

Existing law provides for the licensing and regulation of, among others, banks, credit unions, and other financial institutions by the Commissioner of Financial Institutions. Existing law provides for the licensing and regulation of, among others, residential mortgage lenders and finance lenders by the Commissioner of Corporations. Existing law provides for the licensing and regulation of, among others, real estate brokers by the Real Estate Commissioner. Existing law provides for the licensure and regulation of real estate appraisers by the Director of the Office of Real Estate Appraisers.

This bill would ~~declare the intent of the Legislature to do the following: (1) abolish the Department of Corporations (DOC), the Department of Financial Institutions (DFI), the Department of Real Estate (DRE), and the Office of Real Estate Appraisers (OREA), (2) create a new Department of Financial Services (DFS), (3) designate the chief officer of DFS as the Commissioner of Financial Services, (4) arrange for the consolidation and transfer of various operations and procedures of transfer the powers, duties, purposes, jurisdiction, responsibilities, and functions of the Commissioner of Corporations, the Commissioner of Financial Institutions, the Real Estate Commissioner, and the Director of the Office of Real Estate Appraisers and those respective departments and that office to the Commissioner of Financial Services and DFS, and (5) require DFS to regulate those persons, entities, and transactions subject to regulation by, or subject to the jurisdiction of, DOC, DFI, DRE, and OREA. The bill would make legislative findings and declarations in that this regard.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The regulation and oversight of financial services in
4 California are divided among ~~three~~ *four* regulators, the Department
5 of Financial Institutions, the Department of Real Estate, ~~the Office~~
6 ~~of Real Estate Appraisers~~, and the Department of Corporations.

7 (b) California is one of only a few states that separates the
8 regulation of financial services among different licensing agencies.

9 (c) This division of oversight is most apparent in the regulation
10 of home mortgage lending that is split among several licensing
11 schemes, including the California Finance Lenders Law, the
12 California Residential Mortgage Lending Act, the Real Estate Law,
13 and laws governing the operation of state and federally chartered
14 banks or credit unions.

15 (d) This partition of regulation dilutes consumer protection and
16 creates confusion and unnecessary administrative difficulties for
17 financial services entities.

18 (e) The current regulatory system creates licensing arbitrage,
19 with entities seeking out licenses from various regulators in order
20 to obtain an advantage.

21 *SEC. 2. Section 30 of the Business and Professions Code is*
22 *amended to read:*

23 30. (a) Notwithstanding any other provision of law, any board,
24 as defined in Section 22, and the State Bar and the Department of
25 ~~Real Estate~~ *Financial Services* shall at the time of issuance of the
26 license require that the licensee provide its federal employer
27 identification number, if the licensee is a partnership, or his or her
28 social security number for all others.

29 (b) Any licensee failing to provide the federal identification
30 number or social security number shall be reported by the licensing
31 board to the Franchise Tax Board and, if failing to provide after
32 notification pursuant to paragraph (1) of subdivision (b) of Section
33 19528 of the Revenue and Taxation Code, shall be subject to the
34 penalty provided in paragraph (2) of subdivision (b) of Section
35 19528 of the Revenue and Taxation Code.

(c) In addition to the penalty specified in subdivision (b), a licensing board may not process any application for an original license unless the applicant or licensee provides its federal employer identification number or social security number where requested on the application.

(d) A licensing board shall, upon request of the Franchise Tax Board, furnish to the Franchise Tax Board the following information with respect to every licensee:

- (1) Name.
- (2) Address or addresses of record.
- (3) Federal employer identification number if the entity is a partnership or social security number for all others.
- (4) Type of license.
- (5) Effective date of license or a renewal.
- (6) Expiration date of license.
- (7) Whether license is active or inactive, if known.
- (8) Whether license is new or a renewal.

(e) For the purposes of this section:

(1) "Licensee" means any entity, other than a corporation, authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(2) "License" includes a certificate, registration, or any other authorization needed to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

(3) "Licensing board" means any board, as defined in Section 22, the State Bar, and the Department of ~~Real Estate~~ *Financial Services*.

(f) The reports required under this section shall be filed on magnetic media or in other machine-readable form, according to standards furnished by the Franchise Tax Board.

(g) Licensing boards shall provide to the Franchise Tax Board the information required by this section at a time that the Franchise Tax Board may require.

(h) Notwithstanding Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, the social security number and federal employer identification number furnished pursuant to this section shall not be deemed to be a public record and shall not be open to the public for inspection.

1 (i) Any deputy, agent, clerk, officer, or employee of any
2 licensing board described in subdivision (a), or any former officer
3 or employee or other individual who in the course of his or her
4 employment or duty has or has had access to the information
5 required to be furnished under this section, may not disclose or
6 make known in any manner that information, except as provided
7 in this section to the Franchise Tax Board or as provided in
8 subdivision (k).

9 (j) It is the intent of the Legislature in enacting this section to
10 utilize the social security account number or federal employer
11 identification number for the purpose of establishing the
12 identification of persons affected by state tax laws and for purposes
13 of compliance with Section 17520 of the Family Code and, to that
14 end, the information furnished pursuant to this section shall be
15 used exclusively for those purposes.

16 (k) If the board utilizes a national examination to issue a license,
17 and if a reciprocity agreement or comity exists between the State
18 of California and the state requesting release of the social security
19 number, any deputy, agent, clerk, officer, or employee of any
20 licensing board described in subdivision (a) may release a social
21 security number to an examination or licensing entity, only for the
22 purpose of verification of licensure or examination status.

23 (l) For the purposes of enforcement of Section 17520 of the
24 Family Code, and notwithstanding any other provision of law, any
25 board, as defined in Section 22, and the State Bar and the
26 Department of ~~Real Estate~~ *Financial Services* shall at the time of
27 issuance of the license require that each licensee provide the social
28 security number of each individual listed on the license and any
29 person who qualifies *for* the license. For the purposes of this
30 subdivision, "licensee" means any entity that is issued a license
31 by any board, as defined in Section 22, the State Bar, the
32 Department of ~~Real Estate~~ *Financial Services*, and the Department
33 of Motor Vehicles.

34 *SEC. 3. Section 31 of the Business and Professions Code is*
35 *amended to read:*

36 31. (a) As used in this section, "board" means any entity listed
37 in Section 101, the entities referred to in Sections 1000 and 3600,
38 the State Bar, the Department of ~~Real Estate~~ *Financial Services*,
39 and any other state agency that issues a license, certificate, or

1 registration authorizing a person to engage in a business or
2 profession.

3 (b) Each applicant for the issuance or renewal of a license,
4 certificate, registration, or other means to engage in a business or
5 profession regulated by a board who is not in compliance with a
6 judgment or order for support shall be subject to Section 11350.6
7 of the Welfare and Institutions Code.

8 (c) “Compliance with a judgment or order for ~~support~~,” *support*”
9 has the meaning given in paragraph (4) of subdivision (a) of
10 Section 11350.6 of the Welfare and Institutions Code.

11 *SEC. 4. Section 7500.3 of the Business and Professions Code*
12 *is amended to read:*

13 7500.3. A repossession agency shall not include any of the
14 following:

15 (a) Any bank subject to the jurisdiction of the Commissioner
16 of Financial ~~Institutions Services~~ of the State of California under
17 Division 1 (commencing with Section 99) of the Financial Code
18 or the Comptroller of the Currency of the United States.

19 (b) Any person organized, chartered, or holding a license or
20 authorization certificate to make loans pursuant to the laws of this
21 state or the United States who is subject to supervision by any
22 official or agency of this state or the United States.

23 (c) An attorney at law in performing his or her duties as an
24 attorney at law.

25 (d) The legal owner of collateral that is subject to a security
26 agreement or a bona fide employee employed exclusively and
27 regularly by the legal owner of collateral that is subject to a security
28 agreement. With regard to collateral subject to registration under
29 the Vehicle Code, the legal owner shall be the legal owner listed
30 on the records of the Department of Motor Vehicles or the seller
31 or lessor named on a valid conditional sales contract or rental or
32 lease agreement if the seller or lessor is a licensed vehicle dealer
33 as defined in Section 285 of the Vehicle Code.

34 (e) An officer or employee of the United States of America, or
35 of this state or a political subdivision thereof, while the officer or
36 employee is engaged in the performance of his or her official
37 duties.

38 (f) A qualified certificate holder or a registrant when performing
39 services for, or on behalf of, a licensee.

1 *SEC. 5. Section 7502.1 of the Business and Professions Code*
2 *is amended to read:*

3 7502.1. (a) Any person who violates any provision of this
4 chapter, or who conspires with another person to violate any
5 provision of this chapter, or who knowingly engages a nonexempt
6 unlicensed person to repossess collateral on his or her behalf is
7 guilty of a misdemeanor, and is punishable by a fine of five
8 thousand dollars (\$5,000), or by imprisonment in the county jail
9 for not more than one year, or by both the fine and imprisonment.

10 (b) Within existing resources, the Commissioner of Financial
11 ~~Institutions, the Commissioner of Corporations Services,~~ and the
12 Director of Motor Vehicles may each designate employees to
13 investigate and report on violations of this chapter by any of the
14 licensees of their respective departments. Those employees are
15 authorized to actively cooperate with the bureau in the investigation
16 of those activities.

17 (c) A proceeding to impose the penalties specified in subdivision
18 (a) may be brought in any court of competent jurisdiction in the
19 name of the people of the State of California by the Attorney
20 General or by any district attorney or city attorney, or with the
21 consent of the district attorney, by the city prosecutor in any city
22 or city and county having a full-time city prosecutor, for the
23 jurisdiction in which the violation occurred. If the action is brought
24 by a district attorney, the penalty collected shall be paid to the
25 treasurer of the county in which the judgment is entered. If the
26 action is brought by a city attorney or city prosecutor, one-half of
27 the penalty collected shall be paid to the treasurer of the city in
28 which the judgment was entered and one-half to the treasurer of
29 the county in which the judgment was entered. If the action is
30 brought by the Attorney General, all of the penalty collected shall
31 be deposited in the Private Security Services Fund.

32 *SEC. 6. Section 7502.2 of the Business and Professions Code*
33 *is amended to read:*

34 7502.2. (a) Any financial institution that knowingly engages
35 a nonexempt unlicensed person to repossess collateral on its behalf
36 is guilty of a misdemeanor, and is punishable by a fine of five
37 thousand dollars (\$5,000).

38 (b) Within existing resources, the Commissioner of Financial
39 ~~Institutions and the Commissioner of Corporations Services~~ may
40 each designate employees to investigate and report on violations

1 of this section by any of the licensees of ~~their respective~~
2 ~~departments~~ *the Department of Financial Services*. Those
3 employees are authorized to actively cooperate with the bureau in
4 the investigation of those activities.

5 (c) A proceeding to impose the fine specified in subdivision (a)
6 may be brought in any court of competent jurisdiction in the name
7 of the people of the State of California by the Attorney General
8 or by any district attorney or city attorney, or with the consent of
9 the district attorney, by the city prosecutor in any city or city and
10 county having a full-time city prosecutor, for the jurisdiction in
11 which the violation occurred. If the action is brought by a district
12 attorney, the penalty collected shall be paid to the treasurer of the
13 county in which the judgment is entered. If the action is brought
14 by a city attorney or city prosecutor, one-half of the penalty
15 collected shall be paid to the treasurer of the city in which the
16 judgment was entered and one-half to the treasurer of the county
17 in which the judgment was entered. If the action is brought by the
18 Attorney General, all of the penalty collected shall be deposited
19 in the Private Security Services Fund.

20 *SEC. 7. Section 7522 of the Business and Professions Code is*
21 *amended to read:*

22 7522. This chapter does not apply to:

23 (a) A person employed exclusively and regularly by any
24 employer who does not provide contract security services for other
25 entities or persons, in connection with the affairs of such employer
26 only and where there exists an employer-employee relationship if
27 that person at no time carries or uses any deadly weapon in the
28 performance of his or her duties. For purposes of this subdivision,
29 “deadly weapon” is defined to include any instrument or weapon
30 of the kind commonly known as a blackjack, slungshot, billy,
31 sandclub, sandbag, metal knuckles, any dirk, dagger, pistol,
32 revolver, or any other firearm, any knife having a blade longer
33 than five inches, any razor with an unguarded blade and any metal
34 pipe or bar used or intended to be used as a club.

35 (b) An officer or employee of the United States of America, or
36 of this state or a political subdivision thereof, while the officer or
37 employee is engaged in the performance of his or her official
38 duties, including uniformed peace officers employed part time by
39 a public agency pursuant to a written agreement between a chief

1 of police or sheriff and the public agency, provided the part-time
2 employment does not exceed 50 hours in any calendar month.

3 (c) A person engaged exclusively in the business of obtaining
4 and furnishing information as to the financial rating of persons.

5 (d) A charitable philanthropic society or association duly
6 incorporated under the laws of this state which is organized and
7 maintained for the public good and not for private profit.

8 (e) An attorney at law in performing his or her duties as an
9 attorney at law.

10 (f) Admitted insurers and agents and insurance brokers licensed
11 by the state, performing duties in connection with insurance
12 transacted by them.

13 (g) Any bank subject to the jurisdiction of the Commissioner
14 of Financial ~~Institutions~~ *Services* of the State of California under
15 Division 1 (commencing with Section 99) of the Financial Code
16 or the Comptroller of *the* Currency of the United States.

17 (h) A person engaged solely in the business of securing
18 information about persons or property from public records.

19 (i) A peace officer of this state or a political subdivision thereof
20 while the peace officer is employed by a private employer to
21 engage in off-duty employment in accordance with Section 1126
22 of the Government Code. However, nothing herein shall exempt
23 a peace officer who either contracts for his or her services or the
24 services of others as a private investigator or contracts for his or
25 her services as or is employed as an armed private investigator.
26 For purposes of this subdivision, "armed private investigator"
27 means an individual who carries or uses a firearm in the course
28 and scope of that contract or employment.

29 (j) A licensed insurance adjuster in performing his or her duties
30 within the scope of his or her license as an insurance adjuster.

31 (k) Any savings association subject to the jurisdiction of the
32 Commissioner of Financial ~~Institutions~~ *Services* or the *federal*
33 Office of Thrift Supervision.

34 (l) Any secured creditor engaged in the repossession of the
35 creditor's collateral and any lessor engaged in the repossession of
36 leased property in which it claims an interest.

37 (m) The act of serving process by an individual who is registered
38 as a process server pursuant to Section 22350.

39 (n) (1) A person or business engaged in conducting objective
40 observations of consumer purchases of products or services in the

1 public environments of a business establishment by the use of a
2 preestablished questionnaire, provided that person or business
3 entity does not engage in any other activity that requires licensure
4 pursuant to this chapter. The questionnaire may include objective
5 comments.

6 (2) If a preestablished questionnaire is used as a basis, but not
7 the sole basis, for disciplining or discharging an employee, or for
8 conducting an interview with the employee that might result in the
9 employee being terminated, the employer shall provide the
10 employee with a copy of that questionnaire using the same
11 procedures that an employer is required to follow under Section
12 2930 of the Labor Code for providing an employee with a copy
13 of a shopping investigator's report. This subdivision does not
14 exempt from this chapter a person or business described in
15 paragraph (1) if a preestablished questionnaire of that person or
16 business is used as the sole basis for evaluating an employee's
17 work performance.

18 (o) Any joint labor-management committee established pursuant
19 to the federal Labor Management Cooperation Act of 1978 (Section
20 175a of Title 29 of the United States Code), or its employees,
21 where either the committee or employee is performing a function
22 authorized by the Labor Management Cooperation Act of 1978,
23 which includes, but is not limited, to monitoring public works
24 projects to ensure that employers are complying with federal and
25 state public works laws.

26 *SEC. 8. Section 7582.2 of the Business and Professions Code*
27 *is amended to read:*

28 7582.2. This chapter does not apply to the following:

29 (a) A person who does not meet the requirements to be a
30 proprietary private security officer, as defined in Section 7574.1,
31 and is employed exclusively and regularly by any employer who
32 does not provide contract security services for other entities or
33 persons, in connection with the affairs of the employer only and
34 where there exists an employer-employee relationship if that person
35 at no time carries or uses any deadly weapon in the performance
36 of his or her duties. For purposes of this subdivision, "deadly
37 weapon" is defined to include any instrument or weapon of the
38 kind commonly known as a blackjack, slungshot, billy, sandclub,
39 sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any
40 other firearm, any knife having a blade longer than five inches,

1 any razor with an unguarded blade and any metal pipe or bar used
2 or intended to be used as a club.

3 (b) An officer or employee of the United States of America, or
4 of this state or a political subdivision thereof, while the officer or
5 employee is engaged in the performance of his or her official
6 duties, including uniformed peace officers employed part time by
7 a public agency pursuant to a written agreement between a chief
8 of police or sheriff and the public agency, provided the part-time
9 employment does not exceed 50 hours in any calendar month.

10 (c) A person engaged exclusively in the business of obtaining
11 and furnishing information as to the financial rating of persons.

12 (d) A charitable philanthropic society or association duly
13 incorporated under the laws of this state that is organized and
14 maintained for the public good and not for private profit.

15 (e) Patrol special police officers appointed by the police
16 commission of any city, county, or city and county under the
17 express terms of its charter who also under the express terms of
18 the charter (1) are subject to suspension or dismissal after a hearing
19 on charges duly filed with the commission after a fair and impartial
20 trial, (2) must be not less than 18 years of age nor more than 40
21 years of age, (3) must possess physical qualifications prescribed
22 by the commission, and (4) are designated by the police
23 commission as the owners of a certain beat or territory as may be
24 fixed from time to time by the police commission.

25 (f) An attorney at law in performing his or her duties as an
26 attorney at law.

27 (g) A collection agency or an employee thereof while acting
28 within the scope of his or her employment, while making an
29 investigation incidental to the business of the agency, including
30 an investigation of the location of a debtor or his or her property
31 where the contract with an assignor creditor is for the collection
32 of claims owed or due or asserted to be owed or due or the
33 equivalent thereof.

34 (h) Admitted insurers and agents and insurance brokers licensed
35 by the state, performing duties in connection with insurance
36 transacted by them.

37 (i) Any bank subject to the jurisdiction of the Commissioner of
38 ~~Financial Institutions Services~~ of the State of California under
39 Division 1 (commencing with Section 99) of the Financial Code
40 or the Comptroller of *the* Currency of the United States.

1 (j) A person engaged solely in the business of securing
2 information about persons or property from public records.

3 (k) A peace officer of this state or a political subdivision thereof
4 while the peace officer is employed by a private employer to
5 engage in off-duty employment in accordance with Section 1126
6 of the Government Code. However, nothing herein shall exempt
7 such peace officer who either contracts for his or her services or
8 the services of others as a private patrol operator or contracts for
9 his or her services as or is employed as an armed private security
10 officer. For purposes of this subdivision, “armed security officer”
11 means an individual who carries or uses a firearm in the course
12 and scope of that contract or employment.

13 (l) A retired peace officer of the state or political subdivision
14 thereof when the retired peace officer is employed by a private
15 employer in employment approved by the chief law enforcement
16 officer of the jurisdiction where the employment takes place,
17 provided that the retired officer is in a uniform of a public law
18 enforcement agency, has registered with the bureau on a form
19 approved by the director, and has met any training requirements
20 or their equivalent as established for security personnel under
21 Section 7583.5. This officer may not carry a loaded or concealed
22 firearm unless he or she is exempted under the provisions of
23 subdivision (a) of Section 12027 of the Penal Code or paragraph
24 (1) of subdivision (b) of Section 12031 of the Penal Code or has
25 met the requirements set forth in Section 12033 of the Penal Code.
26 However, nothing herein shall exempt the retired peace officer
27 who contracts for his or her services or the services of others as a
28 private patrol operator.

29 (m) A licensed insurance adjuster in performing his or her duties
30 within the scope of his or her license as an insurance adjuster.

31 (n) Any savings association subject to the jurisdiction of the
32 Commissioner of Financial ~~Institutions~~ *Services* or the *federal*
33 Office of Thrift Supervision.

34 (o) Any secured creditor engaged in the repossession of the
35 creditor’s collateral and any lessor engaged in the repossession of
36 leased property in which it claims an interest.

37 (p) A peace officer in his or her official police uniform acting
38 in accordance with subdivisions (c) and (d) of Section 70 of the
39 Penal Code.

(q) An unarmed, uniformed security person employed exclusively and regularly by a motion picture studio facility employer who does not provide contract security services for other entities or persons in connection with the affairs of that employer only and where there exists an employer-employee relationship if that person at no time carries or uses any deadly weapon, as defined in subdivision (a), in the performance of his or her duties, which may include, but are not limited to, the following business purposes:

(1) The screening and monitoring access of employees of the same employer.

(2) The screening and monitoring access of prearranged and preauthorized invited guests.

(3) The screening and monitoring of vendors and suppliers.

(4) Patrolling the private property facilities for the safety and welfare of all who have been legitimately authorized to have access to the facility.

(r) The changes made to this section by the act adding this subdivision during the ~~2005-06~~ 2005-06 Regular Session of the Legislature shall apply as follows:

(1) On and after July 1, 2006, to a person hired as a security officer on and after January 1, 2006.

(2) On and after January 1, 2007, to a person hired as a security officer before January 1, 2006.

SEC. 9. Section 7742 of the Business and Professions Code is amended to read:

7742. Nothing in this article shall apply to any arrangement, contract, or plan for the issuance of securities now or hereafter authorized under a permit of the Commissioner of ~~Corporations~~ *Financial Services* of this state.

SEC. 10. Section 10003 of the Business and Professions Code is amended to read:

10003. "Commissioner" refers to the ~~Real Estate~~ Commissioner of *Financial Services*. All references to "commissioner" shall be deemed to refer to the Commissioner of *Financial Services*.

SEC. 11. Section 10004 of the Business and Professions Code is amended to read:

10004. "Department" means the Department of ~~Real Estate~~ *Financial Services* in the Business and Transportation Agency.

1 All references to the “department” shall be deemed to refer to the
2 Department of Financial Services.

3 SEC. 12. Section 10005 of the Business and Professions Code
4 is amended to read:

5 10005. Whenever the terms “division,” “State Real Estate
6 Division,” or “Real Estate Division” are used in this division, they
7 mean the Department of ~~Real Estate~~ *Financial Services*.

8 Whenever the terms “ State Real Estate Division” or “ Real
9 Estate Division” are used in any other law, they mean the
10 Department of ~~Real Estate~~ *Financial Services*.

11 SEC. 13. Section 10050 of the Business and Professions Code
12 is repealed.

13 ~~10050. There is in the Business and Transportation Agency a~~
14 ~~Department of Real Estate, the chief officer of which department~~
15 ~~is named the Real Estate Commissioner.~~

16 ~~It shall be the principal responsibility of the commissioner to~~
17 ~~enforce all laws in this part (commencing with Section 10000) and~~
18 ~~Chapter 1 (commencing with Section 11000) of Part 2 of this~~
19 ~~division in a manner which achieves the maximum protection for~~
20 ~~the purchasers of real property and those persons dealing with real~~
21 ~~estate licensees.~~

22 SEC. 14. Section 10051 of the Business and Professions Code
23 is repealed.

24 ~~10051. The commissioner shall be appointed by the Governor.~~

25 SEC. 15. Section 10052 of the Business and Professions Code
26 is repealed.

27 ~~10052. The commissioner shall have been for five years a real~~
28 ~~estate broker actively engaged in business as such in California,~~
29 ~~or shall possess related experience associated with real estate~~
30 ~~activity in California for five years within the last 10 years.~~

31 SEC. 16. Section 10053 of the Business and Professions Code
32 is repealed.

33 ~~10053. The commissioner shall receive an annual salary as~~
34 ~~provided in Chapter 6 (commencing with Section 11550) of Part~~
35 ~~1 of Division 3 of Title 2 of the Government Code, to be paid~~
36 ~~monthly out of the State Treasury upon a warrant of the Controller,~~
37 ~~and shall be allowed his actual and necessary expenses in the~~
38 ~~discharge of his duties.~~

39 SEC. 17. Section 10071 of the Business and Professions Code
40 is amended to read:

1 10071. The commissioner shall enforce the provisions of this
2 part and of Chapter 1 of Part 2. He *or she* has full power to regulate
3 and control the issuance and revocation, both temporary and
4 permanent, of all licenses to be issued under the provisions of this
5 part, and to perform all other acts and duties provided in this part
6 and Chapter 1 of Part 2 and necessary for their enforcement.

7 *SEC. 18. Section 10073 of the Business and Professions Code*
8 *is repealed.*

9 ~~10073. The commissioner shall employ such deputies, clerks~~
10 ~~and employees as he may need to discharge in proper manner the~~
11 ~~duties imposed upon him by law.~~

12 *SEC. 19. Section 10075 of the Business and Professions Code*
13 *is repealed.*

14 ~~10075. Deputies, clerks and employees shall perform such~~
15 ~~duties as the commissioner shall assign to them.~~

16 ~~Subject to the powers of the State Personnel Board and the~~
17 ~~Director of Finance, the commissioner shall fix the compensation~~
18 ~~of such deputies, clerks and employees, which compensation shall~~
19 ~~be paid monthly on a certificate of the commissioner, and on the~~
20 ~~warrant of the Controller out of the State Treasury.~~

21 *SEC. 20. Section 10076 of the Business and Professions Code*
22 *is repealed.*

23 ~~10076. Each deputy shall, after his appointment, take and~~
24 ~~subscribe to the constitutional oath of office and file the same in~~
25 ~~the office of the Secretary of State.~~

26 *SEC. 21. Section 10077 of the Business and Professions Code*
27 *is repealed.*

28 ~~10077. The commissioner shall have his principal office in the~~
29 ~~City of Sacramento, and may establish branch offices in the City~~
30 ~~and County of San Francisco, the City of Los Angeles and in such~~
31 ~~other cities as the commissioner may deem necessary, subject to~~
32 ~~the approval of the Department of Finance.~~

33 *SEC. 22. Section 10078 of the Business and Professions Code*
34 *is repealed.*

35 ~~10078. The commissioner shall adopt a seal with the words~~
36 ~~“Real Estate Commissioner State of California” and such other~~
37 ~~device as the commissioner may desire engraved thereon, by which~~
38 ~~he shall authenticate the proceedings of his office.~~

39 ~~Copies of all records and papers in the office of the commissioner~~
40 ~~certified under the hand and seal of the commissioner shall be~~

1 received in evidence in all cases equally and with like effect as the
2 originals.

3 *SEC. 23. Section 10079 of the Business and Professions Code*
4 *is repealed.*

5 10079. The Attorney General shall render to the commissioner
6 opinions upon all questions of law relating to the construction or
7 interpretation of this part or Chapter 1 of Part 2 or arising in the
8 administration thereof that may be submitted to him by the
9 commissioner. The Attorney General shall act as the attorney for
10 the commissioner in all actions and proceedings brought by or
11 against him under or pursuant to any of the provisions of this part
12 or of Chapter 1 of Part 2.

13 *SEC. 24. Section 10080 of the Business and Professions Code*
14 *is repealed.*

15 10080. The commissioner may adopt, amend, or repeal rules
16 and regulations that are reasonably necessary for the enforcement
17 of the provisions of this part and of Chapter 1 (commencing with
18 Section 11000) of Part 2 of this division. The rules and regulations
19 shall be adopted, amended, or repealed in accordance with the
20 provisions of the Administrative Procedure Act.

21 *SEC. 25. Section 10082 of the Business and Professions Code*
22 *is amended to read:*

23 10082. The commissioner may publish or cause to be published
24 at appropriate intervals a directory or list of licensed brokers and
25 ~~salesmen~~ salespersons and may publish therewith such matter as
26 he or she may deem pertinent to this part and Chapter 1
27 ~~(commencing with Section 11000) of Part 2. He~~ *The*
28 *commissioner* shall furnish one copy of ~~such~~ *the* directory to each
29 licensed broker upon his or her request and the payment of an
30 appropriate charge based upon cost of publication. ~~Such~~ *The*
31 directory may contain copies of the Real Estate Law, Chapter 1
32 (commencing with Section 11000) of Part 2 of Division 4 of the
33 Business and Professions Code, and the Rules and Regulations of
34 the Real Estate Commissioner of Financial Services.

35 *SEC. 26. Section 10131.3 of the Business and Professions Code*
36 *is amended to read:*

37 10131.3. A real estate broker within the meaning of this part
38 is also a person who, for another or others, for compensation or in
39 expectation of compensation, issues or sells, solicits prospective
40 sellers or purchasers of, solicits or obtains listings of, or negotiates

1 the purchase, sale, or exchange of securities as specified in Section
2 25206 of the Corporations Code.

3 The provisions of this section do not apply to a broker-dealer or
4 agent of a broker-dealer licensed by the Commissioner of
5 ~~Corporations~~ *Financial Services* under the provisions of the
6 Corporate Securities Law of 1968.

7 *SEC. 27. Section 10146 of the Business and Professions Code*
8 *is amended to read:*

9 10146. Any real estate broker who contracts for or collects an
10 advance fee from any other person, hereinafter referred to as the
11 “principal,” shall deposit any such amount or amounts, when
12 collected in a trust account with a bank or other recognized
13 depository. Such funds are trust funds and not the funds of the
14 agent. Amounts may be withdrawn therefrom for the benefit of
15 the agent only when actually expended for the benefit of the
16 principal or five days after the verified accounts mentioned
17 hereinafter have been mailed to the principal. Upon request of the
18 commissioner, a broker shall furnish to the commissioner an
19 authorization for examination of financial records of the trust
20 account in accordance with the procedures set forth in Section
21 7473 of the Government Code.

22 The commissioner may issue such rules and regulations as he
23 *or she* deems necessary to regulate the method of accounting, and
24 to accomplish the purpose of the provisions of this code relating
25 to advance fees including, but not limited to, establishing forms
26 for and determining information to be included in such accountings.
27 Each principal shall be furnished a verified copy of such
28 accountings at the end of each calendar quarter and when the
29 contract has been completely performed by the licensee. ~~The Real~~
30 ~~Estate~~ *Commissioner of Financial Services* shall be furnished a
31 verified copy of any account or all accounts on his *or her* demand
32 therefor.

33 Where advance fees actually paid by or on behalf of any principal
34 are not handled in accordance with the preceding paragraph, it
35 shall be presumed that the agent has violated Sections 506 and
36 506a of the Penal Code. The principal may recover treble damages
37 for amounts so misapplied and shall be entitled to reasonable
38 ~~attorneys’~~ *attorney’s* fees in any action brought to recover the
39 same.

1 SEC. 28. *Section 10147 of the Business and Professions Code*
2 *is amended to read:*

3 10147. (a) On or before January 1, 1993, the Seismic Safety
4 Commission shall develop, adopt, and publish a Commercial
5 Property Owner's Guide to Earthquake Safety for distribution to
6 licensees for purposes of Section 2079.9 of the Civil Code and,
7 upon request, to any member of the general public.

8 (b) In developing the guide, the Seismic Safety Commission
9 shall consult with the ~~Office of Emergency Services~~ *California*
10 *Emergency Management Agency*, the Division of Mines and
11 Geology of the Department of Conservation, the Department of
12 ~~Real Estate~~ *Financial Services*, and other interested agencies and
13 persons.

14 (c) The commission shall, to the extent possible, rely on
15 currently available data to develop the guide. To the extent
16 necessary, the commission may contract for the development and
17 production of the guide. The commission shall update the contents
18 of the guide whenever it determines that information within the
19 guide is sufficiently inaccurate or incomplete so as to reduce the
20 effectiveness of the guide. The commission shall charge a fee to
21 cover the costs of production, distribution, development, and
22 updating the guide.

23 (d) The guide shall include, but need not be limited to, all of
24 the following:

25 (1) Maps and information on geologic and seismic hazard
26 conditions in the state.

27 (2) Explanations of typical structural and nonstructural
28 earthquake hazards.

29 (3) Recommendations for mitigating the hazards of an
30 earthquake, including references and explanations of what
31 constitutes "adequate wall anchorage" as defined in Section 8893.1
32 of the Government Code.

33 (4) A statement that there are no guarantees of safety or damage
34 prevention that can be made with respect to a major earthquake
35 and that only precautions, such as retrofitting, can be taken to
36 reduce the risk of various types of earthquake damage. For purposes
37 of preparing the statement, the commission shall confer with
38 insurers and design professional associations.

39 (5) Notice of the obligation to post a sign as required by Section
40 8875.8 of the Government Code.

1 *SEC. 29. Section 10149 of the Business and Professions Code*
2 *is amended to read:*

3 10149. (a) On or before July 1, 1992, the Seismic Safety
4 Commission shall develop, adopt, and publish a Homeowner's
5 Guide to Earthquake Safety for distribution to licensees for
6 purposes of Section 2079.8 of the Civil Code and, upon request,
7 to any member of the general public.

8 (b) In developing the guide, the Seismic Safety Commission
9 shall consult with the ~~Office of Emergency Services~~ *California*
10 *Emergency Management Agency*, the Division of Mines and
11 Geology of the Department of Conservation, the Department of
12 ~~Real Estate~~ *Financial Services*, and other interested agencies and
13 persons.

14 (c) The commission shall, to the extent possible, rely on
15 currently available data to develop the guide. To the extent
16 necessary, the commission may contract for the development and
17 production of the guide. The commission shall update the contents
18 of the guide whenever it determines that information within the
19 guide is sufficiently inaccurate or incomplete so as to reduce the
20 effectiveness of the guide. The commission shall charge a fee to
21 cover the costs of production, distribution, development, and
22 updating the guide.

23 (d) The guide shall include, but need not be limited to, all of
24 the following:

25 (1) Maps and information on geologic and seismic hazard
26 conditions for all areas of the state.

27 (2) Explanations of the related structural and nonstructural
28 hazards.

29 (3) Recommendations for mitigating the hazards of an
30 earthquake.

31 (4) A statement that there are no guarantees of safety or damage
32 prevention that can be made with respect to a major earthquake
33 and that only precautions, such as retrofitting, can be taken to
34 reduce the risk of various types of earthquake damage. For purposes
35 of preparing the statement, the commission shall confer with
36 insurers and design professional associations.

37 *SEC. 30. Section 10150.6 of the Business and Professions Code*
38 *is amended to read:*

39 10150.6. ~~The Real Estate~~ *Commissioner of Financial Services*
40 shall not grant an original real estate broker's license to any person

1 who has not held a real estate salesman's license for at least two
2 years and qualified for renewal real estate ~~salesman~~ *salesperson*
3 status, within the five-year period immediately prior to the date of
4 his *or her* application for the broker's license, and during such
5 time was not actively engaged in the business of real estate
6 ~~salesman~~ *salesperson*, except that an applicant for a real estate
7 broker's license having at least the equivalent of two years' general
8 real estate experience or graduation from a four-year college or
9 university course, which course included specialization in real
10 estate, files a written petition with the Department of ~~Real Estate~~
11 *Financial Services* setting forth his *or her* qualifications and
12 experience, and the commissioner approves, he *or she* may be
13 issued a real estate broker's license immediately upon passing the
14 examination and satisfying the other requirements of this article.

15 *SEC. 31. Section 10151.5 of the Business and Professions Code*
16 *is amended to read:*

17 10151.5. (a) An applicant who is not a resident of this state
18 shall be eligible for a real estate license provided (1) the applicant
19 qualifies for licensure under this chapter, including Section 10162,
20 and (2) the state or other jurisdiction that is the place of residence
21 of the applicant permits a resident of California to qualify for and
22 obtain a real estate license in that jurisdiction.

23 (b) A foreign corporation shall be exempt from the eligibility
24 requirement set forth in clause (2) of subdivision (a) if, and for so
25 long as, at least one of the officers of the corporation who is
26 designated and licensed as a real estate broker pursuant to Section
27 10158 or 10211 is a resident of this state.

28 (c) Every nonresident applicant for a real estate license shall,
29 along with his or her application, file with the ~~Real Estate~~
30 *Commissioner of Financial Services* an irrevocable consent that
31 if in any action commenced against him or her in this state,
32 personal service of process upon him or her cannot be made in this
33 state after the exercise of due diligence, a valid service may
34 thereupon be made upon the applicant by delivering the process
35 to the Department of ~~Real Estate~~ *Financial Services*.

36 *SEC. 32. Section 10153 of the Business and Professions Code*
37 *is amended to read:*

38 10153. In addition to the proof of honesty and truthfulness
39 required of any applicant for a real estate license, the commissioner
40 shall ascertain by written examination that the applicant, and in

1 case of a corporation applicant for a real estate broker's license
2 that each officer, or agent thereof through whom it proposes to act
3 as a real estate licensee, has all of the following:

4 (a) An appropriate knowledge of the English language, including
5 reading, writing, and spelling and of arithmetical computations
6 common to real estate and business opportunity practices.

7 (b) An understanding of the principles of real estate and business
8 opportunity conveyancing, the general purposes and general legal
9 effect of agency contracts, deposit receipts, deeds, mortgages,
10 deeds of trust, chattel mortgages, bills of sale, land contracts of
11 sale and leases, and of the principles of business and land
12 economics and appraisals.

13 (c) A general and fair understanding of the obligations between
14 principal and agent, of the principles of real estate and business
15 opportunity practice and the canons of business ethics pertaining
16 thereto, of the provisions of this part, of Chapter 1 (commencing
17 with Section 11000) of Part 2, and of the regulations of the ~~Real~~
18 ~~Estate~~ Commissioner of *Financial Services* as contained in Title
19 10 of the California Administrative Code.

20 *SEC. 33. Section 10159.2 of the Business and Professions Code*
21 *is amended to read:*

22 10159.2. (a) The officer designated by a corporate broker
23 licensee pursuant to Section 10211 shall be responsible for the
24 supervision and control of the activities conducted on behalf of
25 the corporation by its officers and employees as necessary to secure
26 full compliance with the provisions of this division, including the
27 supervision of salespersons licensed to the corporation in the
28 performance of acts for which a real estate license is required.

29 (b) A corporate broker licensee that has procured additional
30 licenses in accordance with Section 10158 through officers other
31 than the officer designated pursuant to Section 10211 may, by
32 appropriate resolution of its board of directors, assign supervisory
33 responsibility over salespersons licensed to the corporation to its
34 broker-officers.

35 (c) A certified copy of any resolution of the board of directors
36 assigning supervisory responsibility over real estate salespersons
37 licensed to the corporation shall be filed with the ~~Real Estate~~
38 Commissioner of *Financial Services* within five days after the
39 adoption or modification thereof.

1 *SEC. 34. Section 10175.2 of the Business and Professions Code*
2 *is amended to read:*

3 10175.2. (a) If the ~~Real Estate~~ Commissioner of *Financial*
4 *Services* determines that the public interest and public welfare will
5 be adequately served by permitting a real estate licensee to pay a
6 monetary penalty to the department in lieu of an actual license
7 suspension, the commissioner may, on the petition of the licensee,
8 stay the execution of all or some part of the suspension on the
9 condition that the licensee pay a monetary penalty and the further
10 condition that the licensee incur no other cause for disciplinary
11 action within a period of time specified by the commissioner.

12 (b) The commissioner may exercise the discretion granted under
13 subdivision (a) either with respect to a suspension ordered by a
14 decision after a contested hearing on an accusation against the
15 licensee or by stipulation with the licensee after the filing of an
16 accusation, but prior to the rendering of a decision based upon the
17 accusation. In either case, the terms and conditions of the
18 disciplinary action against the licensee shall be made part of a
19 formal decision of the commissioner.

20 (c) If a licensee fails to pay the monetary penalty in accordance
21 with the terms and conditions of the decision of the commissioner,
22 the commissioner may, without a hearing, order the immediate
23 execution of all or any part of the stayed suspension in which event
24 the licensee shall not be entitled to any repayment nor credit,
25 prorated or otherwise, for money paid to the department under the
26 terms of the decision.

27 (d) The amount of the monetary penalty payable under this
28 section shall not exceed two hundred fifty dollars (\$250) for each
29 day of suspension stayed nor a total of ten thousand dollars
30 (\$10,000) per decision regardless of the number of days of
31 suspension stayed under the decision.

32 (e) Any monetary penalty received by the department pursuant
33 to this section shall be credited to the Recovery Account of the
34 Real Estate Fund.

35 *SEC. 35. Section 10176.1 of the Business and Professions Code*
36 *is amended to read:*

37 10176.1. (a) (1) Whenever the commissioner takes any
38 enforcement or disciplinary action against a licensee, and the
39 enforcement or disciplinary action is related to escrow services
40 provided pursuant to paragraph (4) of subdivision (a) of Section

1 17006 of the Financial Code, upon the action becoming final the
2 commissioner shall notify the Insurance Commissioner ~~and the~~
3 ~~Commissioner of Corporations~~ of the action or actions taken. The
4 purpose of this notification is to alert the departments that
5 enforcement or disciplinary action has been taken, if the licensee
6 seeks or obtains employment with entities regulated by the
7 departments.

8 (2) The commissioner shall provide the Insurance Commissioner
9 ~~and the Commissioner of Corporations~~, in addition to the
10 notification of the action taken, with a copy of the written
11 accusation, statement of issues, or order issued or filed in the matter
12 and, at the request of the Insurance Commissioner ~~or the~~
13 ~~Commissioner of Corporations~~, with any underlying factual
14 material relevant to the enforcement or disciplinary action. Any
15 confidential information provided by the commissioner to the
16 Insurance Commissioner ~~or the Commissioner of Corporations~~
17 shall not be made public pursuant to this section. Notwithstanding
18 any other provision of law, the disclosure of any underlying factual
19 material to the Insurance Commissioner ~~or the Commissioner of~~
20 ~~Corporations~~ shall not operate as a waiver of confidentiality or
21 any privilege that the commissioner may assert.

22 (b) The commissioner shall establish and maintain, on the
23 *Internet* Web site maintained by the Department of ~~Real Estate~~
24 *Financial Services*, a database of its licensees, including those who
25 have been subject to any enforcement or disciplinary action that
26 triggers the notification requirements of this section. The database
27 shall also contain a direct link to the databases, described in Section
28 17423.1 of the Financial Code and Section 12414.31 of the
29 Insurance Code and required to be maintained on the *Internet* Web
30 ~~sites~~ *site* of the ~~Department of Corporations and the~~ Department
31 of Insurance, ~~respectively~~, of persons who have been subject to
32 enforcement or disciplinary action for malfeasance or misconduct
33 related to the escrow industry by the Insurance Commissioner ~~and~~
34 ~~the Commissioner of Corporations~~.

35 (c) There shall be no liability on the part of, and no cause of
36 action of any nature shall arise against, the State of California, the
37 Department of ~~Real Estate~~ *Financial Services*, the ~~Real Estate~~
38 *Commissioner of Financial Services*, any other state agency, or
39 any officer, agent, employee, consultant, or contractor of the state,
40 for the release of any false or unauthorized information pursuant

1 to this section, unless the release of that information was done with
2 knowledge and malice, or for the failure to release any information
3 pursuant to this section.

4 *SEC. 36. Section 10177 of the Business and Professions Code*
5 *is amended to read:*

6 10177. The commissioner may suspend or revoke the license
7 of a real estate licensee, or may deny the issuance of a license to
8 an applicant, who has done any of the following, or may suspend
9 or revoke the license of a corporation, or deny the issuance of a
10 license to a corporation, if an officer, director, or person owning
11 or controlling 10 percent or more of the corporation's stock has
12 done any of the following:

13 (a) Procured, or attempted to procure, a real estate license or
14 license renewal, for himself or herself or a salesperson, by fraud,
15 misrepresentation, or deceit, or by making a material misstatement
16 of fact in an application for a real estate license, license renewal,
17 or reinstatement.

18 (b) Entered a plea of guilty or nolo contendere to, or been found
19 guilty of, or been convicted of, a felony, or a crime substantially
20 related to the qualifications, functions, or duties of a real estate
21 licensee, and the time for appeal has elapsed or the judgment of
22 conviction has been affirmed on appeal, irrespective of an order
23 granting probation following that conviction, suspending the
24 imposition of sentence, or of a subsequent order under Section
25 1203.4 of the Penal Code allowing that licensee to withdraw his
26 or her plea of guilty and to enter a plea of not guilty, or dismissing
27 the accusation or information.

28 (c) Knowingly authorized, directed, connived at, or aided in the
29 publication, advertisement, distribution, or circulation of a material
30 false statement or representation concerning his or her designation
31 or certification of special education, credential, trade organization
32 membership, or business, or concerning a business opportunity or
33 a land or subdivision, as defined in Chapter 1 (commencing with
34 Section 11000) of Part 2, offered for sale.

35 (d) Willfully disregarded or violated the Real Estate Law (Part
36 1 (commencing with Section 10000)) or Chapter 1 (commencing
37 with Section 11000) of Part 2 or the rules and regulations of the
38 commissioner for the administration and enforcement of the Real
39 Estate Law and Chapter 1 (commencing with Section 11000) of
40 Part 2.

1 (e) Willfully used the term “realtor” or a trade name or insignia
2 of membership in a real estate organization of which the licensee
3 is not a member.

4 (f) Acted or conducted himself or herself in a manner that would
5 have warranted the denial of his or her application for a real estate
6 license, or has either had a license denied or had a license issued
7 by another agency of this state, another state, or the federal
8 government revoked or suspended for acts that, if done by a real
9 estate licensee, would be grounds for the suspension or revocation
10 of a California real estate license, if the action of denial, revocation,
11 or suspension by the other agency or entity was taken only after
12 giving the licensee or applicant fair notice of the charges, an
13 opportunity for a hearing, and other due process protections
14 comparable to the Administrative Procedure Act (Chapter 3.5
15 (commencing with Section 11340), Chapter 4 (commencing with
16 Section 11370), and Chapter 5 (commencing with Section 11500)
17 of Part 1 of Division 3 of Title 2 of the Government Code), and
18 only upon an express finding of a violation of law by the agency
19 or entity.

20 (g) Demonstrated negligence or incompetence in performing
21 an act for which he or she is required to hold a license.

22 (h) As a broker licensee, failed to exercise reasonable
23 supervision over the activities of his or her salespersons, or, as the
24 officer designated by a corporate broker licensee, failed to exercise
25 reasonable supervision and control of the activities of the
26 corporation for which a real estate license is required.

27 (i) Has used his or her employment by a governmental agency
28 in a capacity giving access to records, other than public records,
29 in a manner that violates the confidential nature of the records.

30 (j) Engaged in any other conduct, whether of the same or a
31 different character than specified in this section, which constitutes
32 fraud or dishonest dealing.

33 (k) Violated any of the terms, conditions, restrictions, and
34 limitations contained in an order granting a restricted license.

35 (l) (1) Solicited or induced the sale, lease, or listing for sale or
36 lease of residential property on the ground, wholly or in part, of
37 loss of value, increase in crime, or decline of the quality of the
38 schools due to the present or prospective entry into the
39 neighborhood of a person or persons having a characteristic listed
40 in subdivision (a) or (d) of Section 12955 of the Government Code,

1 as those characteristics are defined in Sections 12926, 12926.1,
2 subdivision (m), and paragraph (1) of subdivision (p) of Section
3 12955, and Section 12955.2 of the Government Code.

4 (2) Notwithstanding paragraph (1), with respect to familial
5 status, paragraph (1) shall not be construed to apply to housing for
6 older persons, as defined in Section 12955.9 of the Government
7 Code. With respect to familial status, nothing in paragraph (1)
8 shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11,
9 and 799.5 of the Civil Code, relating to housing for senior citizens.
10 Subdivision (d) of Section 51 and Section 1360 of the Civil Code
11 and subdivisions (n), (o), and (p) of Section 12955 of the
12 Government Code shall apply to paragraph (1).

13 (m) Violated the Franchise Investment Law (Division 5
14 (commencing with Section 31000) of Title 4 of the Corporations
15 Code) or regulations of the Commissioner of ~~Corporations~~
16 *Financial Services* pertaining thereto.

17 (n) Violated the Corporate Securities Law of 1968 (Division 1
18 (commencing with Section 25000) of Title 4 of the Corporations
19 Code) or the regulations of the Commissioner of ~~Corporations~~
20 *Financial Services* pertaining thereto.

21 (o) Failed to disclose to the buyer of real property, in a
22 transaction in which the licensee is an agent for the buyer, the
23 nature and extent of a licensee's direct or indirect ownership
24 interest in that real property. The direct or indirect ownership
25 interest in the property by a person related to the licensee by blood
26 or marriage, by an entity in which the licensee has an ownership
27 interest, or by any other person with whom the licensee has a
28 special relationship shall be disclosed to the buyer.

29 (p) Violated Article 6 (commencing with Section 10237).

30 If a real estate broker that is a corporation has not done any of
31 the foregoing acts, either directly or through its employees, agents,
32 officers, directors, or persons owning or controlling 10 percent or
33 more of the corporation's stock, the commissioner may not deny
34 the issuance of a real estate license to, or suspend or revoke the
35 real estate license of, the corporation, provided that any offending
36 officer, director, or stockholder, who has done any of the foregoing
37 acts individually and not on behalf of the corporation, has been
38 completely disassociated from any affiliation or ownership in the
39 corporation.

1 *SEC. 37. Section 10225 of the Business and Professions Code*
2 *is amended to read:*

3 10225. An application for a permit to sell real property
4 securities secured by liens on real property situated outside the
5 State of California shall be accompanied by the filing fee together
6 with an amount equivalent to twenty-five cents (\$0.25) a mile for
7 each mile going and returning, or where public transportation is
8 available the actual round trip fare pertaining thereto, estimated
9 by the commissioner to be traveled from the office of the
10 Department of ~~Real Estate~~ *Financial Services* where the application
11 is filed to the location of the property, and the amount estimated
12 to be necessary to cover the expense of the inspection and appraisal
13 of the property, not to exceed seventy-five dollars (\$75) a day for
14 each day actually spent in the inspection and appraisal of the
15 property or properties.

16 *SEC. 38. Section 10231.2 of the Business and Professions Code*
17 *is amended to read:*

18 10231.2. (a) A real estate broker who, through express or
19 implied representations that the broker or any salesperson acting
20 on the broker's behalf is engaging in acts for which a real estate
21 license is required by subdivision (d) or (e) of Section 10131,
22 proposes to solicit and accept funds, or to cause the solicitation
23 and acceptance of funds, to be applied to a purchase or loan
24 transaction in which the broker will directly or indirectly obtain
25 the use or benefit of the funds other than for commissions, fees,
26 and costs and expenses as provided by law for the broker's services
27 as an agent, shall, prior to the making of any representation,
28 solicitation, or presentation of the statement described in
29 subdivision (b), submit the following to the Department of ~~Real~~
30 ~~Estate~~ *Financial Services*:

31 (1) A true copy of the statement described in subdivision (b)
32 complete except for the signature of the prospective lender or
33 purchaser.

34 (2) A statement that the submittal is being made to the
35 department pursuant to Section 10231.2.

36 (b) A broker making a solicitation pursuant to subdivision (a)
37 shall deliver, or cause to be delivered, to the person solicited, the
38 applicable completed statement described in Section 10232.5 not
39 less than 24 hours before the earlier of the acceptance of any funds
40 from that person by or on behalf of the broker or the execution of

1 any instrument obligating the person to make the loan or purchase.
2 The statement shall be signed by the prospective lender or
3 purchaser and by the real estate broker or, on the broker's behalf,
4 by a real estate salesperson licensed to the broker. When so
5 executed, an exact copy of the executed statement shall be given
6 to the prospective lender or purchaser, and the broker shall retain
7 a true copy of the executed statement for a period of four years.

8 (c) None of the provisions of subdivision (a) or (b) shall apply
9 in the case of an offering of a security authorized pursuant to
10 applicable provisions of the Corporate Securities Law of 1968
11 (Division 1 (commencing with Section 25000 of Title 4 of the
12 Corporations Code).

13 (d) In the case of a solicitation by a corporate real estate broker,
14 the provisions of subdivisions (a) and (b) shall apply if the funds
15 solicited are intended for the direct or indirect use or benefit of an
16 officer or director of the corporation or of a person with a 10
17 percent or greater ownership interest in the corporation.

18 *SEC. 39. Section 10232.1 of the Business and Professions Code*
19 *is amended to read:*

20 10232.1. (a) A real estate broker, prior to the use of any
21 proposed advertisement in connection with the conduct of activities
22 described in subdivisions (d) and (e) of Section 10131 and Section
23 10131.1, may submit a true copy thereof to the Department of ~~Real~~
24 ~~Estate~~ *Financial Services* for approval. The submission shall be
25 accompanied by a fee of not more than forty dollars (\$40). The
26 commissioner shall by regulation prescribe the amount of the fee.
27 If disapproval of the proposed advertisement is not communicated
28 by the department to the broker within 15 calendar days after
29 receipt of the copy of the proposed advertisement by the
30 department, the proposed advertisement shall be deemed approved,
31 but the department shall not be precluded from disapproving a
32 later publication or other use of the same or similar advertising.

33 The commissioner shall adopt regulations pertaining to the
34 submittal and clearance of that advertising and establishing criteria
35 for approval to ensure that the public will be protected against
36 false or misleading representations.

37 Except as provided in subdivision (b), "advertisement" includes
38 dissemination in any newspaper, circular, form letter, brochure or
39 similar publication, display, sign, radio broadcast or telecast, which
40 concerns (1) the use, terms, rates, conditions, or the amount of any

1 loan or sale referred to in subdivisions (d) and (e) of Section 10131
2 or Section 10131.1 or (2) the security, solvency, or stability of any
3 person carrying on the activities described in those sections.

4 (b) "Advertisement" does not include a letter or brochure that
5 meets both of the following criteria:

6 (1) It is restricted in distribution to other real estate brokers and
7 to persons for whom the broker has previously acted as an agent
8 in arranging a loan secured by real property or in the purchase,
9 sale, or exchange of a deed of trust or real property sales contract.

10 (2) It is restricted in content to the identification and a
11 description of the terms of loans, mortgages, deeds of trust, real
12 property sales contracts, or any combination thereof offered for
13 funding or purchase through the broker as agent.

14 (c) Subdivision (a) is not applicable to advertising that is used
15 exclusively in connection with an offering authorized by permit
16 issued pursuant to the applicable provisions of the Corporate
17 Securities Law of 1968 (Division 1 (commencing with Section
18 25000 of Title 4 of the Corporations Code).

19 (d) All advertising approvals shall be for a period of five years
20 after the date of approval. The approval period applies to all
21 advertising, including that which was previously submitted on a
22 mandatory basis.

23 *SEC. 40. Section 10232.2 of the Business and Professions Code*
24 *is amended to read:*

25 10232.2. A real estate broker who meets the criteria of
26 subdivision (a) of Section 10232 shall annually file the reports
27 referred to in subdivisions (a) and (c) with the Department of ~~Real~~
28 ~~Estate~~ *Financial Services* within 90 days after the end of the
29 broker's fiscal year or within any additional time as the ~~Real Estate~~
30 *Commissioner of Financial Services* may allow for filing for good
31 cause:

32 (a) The report of a review by a licensed California independent
33 public accountant of trust fund financial statements, conducted in
34 accordance with generally accepted accounting practices, which
35 shall include within its scope the following information for the
36 fiscal year relative to the business activities of the broker described
37 in subdivisions (d) and (e) of Section 10131:

38 (1) The receipt and disposition of all funds of others to be
39 applied to the making of loans and the purchasing of promissory
40 notes or real property sales contracts.

1 (2) The receipt and disposition of all funds of others in
2 connection with the servicing by the broker of the accounts of
3 owners of promissory notes and real property sales contracts
4 including installment payments and loan or contract payoffs by
5 obligors.

6 (3) A statement as of the end of the fiscal year which shall
7 include an itemized trust fund accounting of the broker and
8 confirmation that the trust funds are on deposit in an account or
9 accounts maintained by the broker in a financial institution.

10 (b) A broker who meets the criteria of Section 10232, but who,
11 in carrying on the activities described in subdivisions (d) and (e)
12 of Section 10131, has not during a fiscal year, accepted for the
13 benefit of a person to whom the broker is a trustee, any payment
14 or remittance in a form convertible to cash by the broker, need not
15 comply with the provisions of subdivision (a). In lieu thereof, the
16 broker shall submit to the commissioner within 30 days after the
17 end of the broker's fiscal year or, within any additional time as
18 the commissioner may allow for a filing for good cause, a notarized
19 statement under penalty of perjury on a form provided by the
20 department attesting to the fact that the broker did not receive any
21 trust funds in cash or convertible to cash during the fiscal year.

22 (c) A report of all of the following aspects of the business
23 conducted by the broker while engaging in activities described in
24 subdivisions (d) and (e) of Section 10131 and in Section 10131.1:

25 (1) Number and aggregate dollar amount of loan, trust deed
26 sales and real property sales contract transactions negotiated.

27 (2) Number and aggregate dollar amount of promissory notes
28 and contracts serviced by the broker or an affiliate of the broker.

29 (3) Number and aggregate dollar amount of late payment
30 charges, prepayment penalties and other fees or charges collected
31 and retained by the broker under servicing agreements with
32 beneficiaries and obligees.

33 (4) Default and foreclosure experience in connection with
34 promissory notes and contracts subject to servicing agreements
35 between the broker and beneficiaries or obligees.

36 (5) Commissions received by the broker for services performed
37 as agent in negotiating loans and sales of promissory notes and
38 real property sales contracts.

39 (6) Aggregate costs and expenses as referred to in Section 10241
40 paid by borrowers to the broker.

1 (d) The commissioner shall adopt regulations prescribing the
2 form and content of the report referred to in subdivision (c) with
3 appropriate categories to afford a better understanding of the
4 business conducted by the broker.

5 (e) If the broker fails to file either of the reports required under
6 subdivisions (a) and (c) within the time permitted herein, the
7 commissioner may cause an examination and report to be made
8 and may charge the broker one and one-half times the cost of
9 making the examination and report. In determining the hourly cost
10 incurred by the commissioner for conducting an examination and
11 preparing the report, the commissioner may use the estimated
12 average hourly cost for all department audit staff performing audits
13 of real estate brokers. If a broker fails to pay the above amount
14 within 60 days of the mailing of a notice of billing, the
15 commissioner may suspend the broker's license or deny renewal
16 of the broker's license. The suspension or denial shall remain in
17 effect until the above amount is paid or the broker's right to renew
18 a license has expired. The commissioner may maintain an action
19 for the recovery of the above amount in any court of competent
20 jurisdiction.

21 (f) The reports referred to in subdivisions (a) and (c) are
22 exempted from any requirement of public disclosure by paragraph
23 (2) of subdivision (d) of Section 6254 of the Government Code.
24 The commissioner shall annually make and file as a public record,
25 a composite of the annual reports and any comments thereon which
26 are deemed to be in the public interest.

27 *SEC. 41. Section 10232.4 of the Business and Professions Code*
28 *is amended to read:*

29 10232.4. (a) In making a solicitation to a particular person and
30 in negotiating with that person to make a loan secured by real
31 property or to purchase a real property sales contract or a note
32 secured by a deed of trust, a real estate broker shall deliver to the
33 person solicited the applicable completed statement described in
34 Section 10232.5 as early as practicable before he or she becomes
35 obligated to make the loan or purchase and, except as provided in
36 subdivision (c), before the receipt by or on behalf of the broker of
37 any funds from that person. The statement shall be signed by the
38 prospective lender or purchaser and by the real estate broker, or
39 by a real estate salesperson licensed to the broker, on the broker's
40 behalf. When so executed, an exact copy shall be given to the

1 prospective lender or purchaser, and the broker shall retain a true
2 copy of the executed statement for a period of three years.

3 (b) The requirement of delivery of a disclosure statement
4 pursuant to subdivision (a) shall not apply with respect to the
5 following persons:

6 (1) The prospective purchaser of a security offered under
7 authority of a permit issued pursuant to applicable provisions of
8 the Corporate Securities Law of 1968 (Division 1 (commencing
9 with Section 25000) of Title 4 of the Corporations Code) that
10 require that each prospective purchaser of a security be given a
11 prospectus or other form of disclosure statement approved by the
12 department issuing the permit.

13 (2) The seller of real property who agrees to take back a
14 promissory note of the purchaser as a method of financing all or
15 a part of the purchase of the property.

16 (3) The prospective purchaser of a security offered pursuant to
17 and in accordance with a regulation duly adopted by the
18 Commissioner of ~~Corporations~~ *Financial Services* granting an
19 exemption from qualification under the Corporate Securities Law
20 of 1968 for the offering if one of the conditions of the exemption
21 is that each prospective purchaser of the security be given a
22 disclosure statement prescribed by the regulation before the
23 prospective purchaser becomes obligated to purchase the security.

24 (4) A prospective lender or purchaser, if that lender or purchaser
25 is any of the following:

26 (A) The United States or any state, district, territory, or
27 commonwealth thereof, or any city, county, city and county, public
28 district, public authority, public corporation, public entity, or
29 political subdivision of a state, district, territory, or commonwealth
30 of the United States, or any agency or corporate or other
31 instrumentality of any one or more of the foregoing, including the
32 Federal National Mortgage Association, the Government National
33 Mortgage Association, the Federal Home Loan Mortgage
34 Corporation, the Federal Housing Administration, and the
35 Veteran's Administration.

36 (B) Any bank or subsidiary thereof, bank holding company or
37 subsidiary thereof, trust company, savings bank or savings and
38 loan association or subsidiary thereof, savings bank or savings
39 association holding company or subsidiary thereof, credit union,
40 industrial bank or industrial loan company, finance lender, or

1 insurance company doing business under the authority of, and in
2 accordance with, the laws of this state, any other state, or of the
3 United States relating to banks, trust companies, savings banks or
4 savings associations, credit unions, industrial banks or industrial
5 loan companies, commercial finance lenders, or insurance
6 companies, as evidenced by a license, certificate, or charter issued
7 by the United States or any state, district, territory, or
8 commonwealth of the United States.

9 (C) Trustees of pension, profitsharing, or welfare fund, if the
10 pension, profitsharing, or welfare fund has a net worth of not less
11 than fifteen million dollars (\$15,000,000).

12 (D) Any corporation with outstanding securities registered under
13 Section 12 of the Securities Exchange Act of 1934 or any wholly
14 owned subsidiary of that corporation.

15 (E) Any syndication or other combination of any of the entities
16 specified in subparagraph (A), (B), (C), or (D) which is organized
17 to purchase the promissory note.

18 (F) A licensed real estate broker engaging in the business of
19 selling all or part of the loan, note, or contract to a lender or
20 purchaser to whom no disclosure is required pursuant to this
21 subdivision.

22 (G) A licensed residential mortgage lender or servicer when
23 acting under the authority of that license.

24 (c) When the broker has custody of funds of a prospective lender
25 or purchaser which were received and are being maintained with
26 the express permission of the owner and in accordance with law,
27 and the broker retains the funds in an escrow depository or a trust
28 fund account pending receipt of the owner's express written
29 instructions to disburse the funds for a loan or purchase, the broker
30 shall cause the disclosure statement to be delivered to the owner
31 and shall obtain the owner's written consent to the proposed
32 disbursement before making the disbursement. Unless the broker
33 has a written agreement with the owner as provided in Section
34 10231.1, the broker shall transmit to the owner not later than 25
35 days after receipt, all funds then in the broker's custody for which
36 the owner has not given written instructions authorizing
37 disbursement.

38 *SEC. 42. Section 10232.25 of the Business and Professions*
39 *Code is amended to read:*

10232.25. (a) A real estate broker who meets the criteria of subdivision (a) of Section 10232 shall, within 30 days after the end of each of the first three fiscal quarters of the broker's fiscal year, or within any additional time as the ~~Real Estate~~ *Commissioner of Financial Services* may allow for good cause, file with the commissioner a trust funds status report as of the last day of the fiscal quarter which shall include the following:

(1) A representation that the form and content of the trust account records of the broker are in compliance with the regulations of the commissioner.

(2) A representation that the broker's trust fund bank account is maintained in compliance with the regulations of the commissioner.

(3) A statement of the broker's aggregate accountability for trust funds.

(4) A report of trust funds in the broker's custody consisting of the trust account bank statements as of the bank's accounting date immediately preceding the end of the fiscal quarter and a schedule of withdrawals and deposits adjusting the account to its true balance as of the end of the fiscal quarter.

(5) A statement explaining any difference in amount between the broker's total accountability under paragraph (3) above and the adjusted trust account bank balance under paragraph (4) above.

(b) Each report made pursuant to subdivision (a) shall include the following:

(1) The name, address, and position or capacity of the person who prepared the report.

(2) A declaration under penalty of perjury by the broker that the information and representations in the report are true, complete, and correct to the best of the broker's knowledge and belief. The declaration in a report submitted on behalf of a corporate broker shall be signed by a broker-officer through whom the corporation is licensed as a real estate broker and by the chief executive officer of the corporation if he or she is not the signing broker-officer.

(c) If a broker fails to file a report required under subdivision (a) within the time permitted, the commissioner may cause an examination and report to be made and may charge the broker one and one-half times the cost of making the examination and report. In determining the hourly cost incurred by the commissioner for conducting an examination and preparing the report, the

1 commissioner may use the estimated average hourly cost for all
2 department audit staff performing audits of real estate brokers. If
3 a broker fails to pay the above amount within 60 days of the
4 mailing of a notice of billing, the commissioner may suspend the
5 broker's license or deny renewal of the broker's license. The
6 suspension or denial shall remain in effect until the above amount
7 is paid or the broker's right to renew a license has expired. The
8 commissioner may maintain an action for the recovery of the above
9 amount in any court of competent jurisdiction.

10 (d) A broker who meets the criteria of Section 10232, but who,
11 in carrying on the activities described in subdivisions (d) and (e)
12 of Section 10131, did not during a fiscal quarter, accept for the
13 benefit of a person to whom the broker is trustee, any payment or
14 remittance in a form convertible to cash by the broker, need not
15 comply with the provisions of subdivision (a). In lieu thereof, the
16 broker shall submit to the commissioner within 30 days after the
17 end of the fiscal quarter or within any additional time as the
18 commissioner may allow for good cause, a statement under penalty
19 of perjury on a form provided by the department attesting to the
20 fact that the broker did not receive any trust funds in cash or
21 convertible to cash during the fiscal quarter.

22 (e) Any real estate broker who engages in any of the activities
23 specified in subdivision (d) or (e) of Section 10131, but who is not
24 required by this section to file trust funds status reports with the
25 commissioner and who is not exempt therefrom under subdivision
26 (d), shall complete trust funds status reports in accordance with
27 either (1) the requirements of subdivisions (a) and (b) applicable
28 to trust funds status reports filed with the commissioner, or (2) the
29 requirements established by the lender or note owner, if the lender
30 or note owner does all of the following: (i) requires monthly
31 reconciliations of trust account balances; (ii) requires annual,
32 CPA-audited financial statements; and (iii) maintains a contractual
33 right to audit the trust accounts held by the broker on behalf of the
34 lender or note owner.

35 The broker shall retain all trust funds status reports prepared
36 under this subdivision on file at the broker's offices, where they
37 shall be subject to inspection by representatives of the
38 commissioner upon 24 hours' notice.

39 *SEC. 43. Section 10236.2 of the Business and Professions Code*
40 *is amended to read:*

1 10236.2. (a) A real estate broker who satisfies the criteria of
2 subdivision (a) or (b) of Section 10232 and who fails to notify the
3 Department of ~~Real Estate~~ *Financial Services*, in writing, of that
4 fact within 30 days thereafter as required by subdivision (e) of
5 Section 10232 shall be assessed a penalty of fifty dollars (\$50) per
6 day for each additional day written notification has not been
7 received up to and including the 30th day after the first day of the
8 assessment penalty. On and after the 31st day the penalty is one
9 hundred dollars (\$100) per day, not to exceed a total penalty of
10 ten thousand dollars (\$10,000), regardless of the number of days,
11 until the department receives the written notification.

12 (b) The commissioner may suspend or revoke the license of any
13 real estate broker who fails to pay a penalty imposed under this
14 section. In addition, the commissioner may bring an action in an
15 appropriate court of this state to collect payment of the penalty.

16 (c) All penalties paid or collected under this section shall be
17 deposited into the Recovery Account of the Real Estate Fund.

18 *SEC. 44. Section 10239 of the Business and Professions Code,*
19 *as added by Section 2 of Chapter 901 of the Statutes of 2003, is*
20 *amended to read:*

21 10239. The jurisdiction of the Commissioner of ~~Corporations~~
22 *Financial Services* under the Corporate Securities Law of 1968
23 shall be neither limited nor expanded by this article. Nothing in
24 this article shall be construed to supersede or restrict the application
25 of the Corporate Securities Law of 1968. A transaction under this
26 article shall not be construed to be a transaction involving the
27 issuance of securities subject to authorization by the ~~Real Estate~~
28 Commissioner of *Financial Services* under subdivision (e) of
29 Section 25100 of the Corporations Code.

30 *SEC. 45. Section 10249.3 of the Business and Professions Code*
31 *is amended to read:*

32 10249.3. (a) The commissioner may by regulation prescribe
33 filing fees in connection with registrations with the department
34 pursuant to the provisions of this article that are lower than the
35 maximum fees specified in subdivision (b) if the commissioner
36 determines that the lower fees are sufficient to offset the costs and
37 expenses incurred in the administration of this article. The
38 commissioner shall hold at least one hearing each calendar year
39 to determine if lower fees than those specified in subdivision (b)
40 should be prescribed.

(b) The filing fee for an application for a registration with the department pursuant to the provisions of this article shall not exceed the following for each subdivision or phase of the subdivision in which interests are to be offered for sale or lease:

(1) An application for an original registration: One hundred dollars (\$100).

(2) An application for a renewal registration: One hundred dollars (\$100).

(3) An application for an amended registration: One hundred dollars (\$100).

(c) All fees collected by the Department of ~~Real Estate~~ *Financial Services* under authority of this article shall be deposited into the Real Estate Fund under Chapter 6 (commencing with Section 10450) of Part 1. All fees received by the department pursuant to the provisions of this article shall be deemed earned upon receipt. No part of any fee is refundable unless the commissioner determines that it was paid as a result of mistake or inadvertence.

SEC. 46. Section 10249.8 of the Business and Professions Code is amended to read:

10249.8. (a) Notwithstanding any provision to the contrary in Section 10249 or 11000, it is unlawful for a person, in this state, to sell or lease or offer for sale or lease lots, parcels, or interests in a subdivision, as defined in Section 10249.1, entirely located outside of this state but within the United States, unless any printed material, literature, advertising, or invitation in this state relating to that sale, lease, or offer clearly and conspicuously contains the following disclaimer in at least 10-point type:

~~WARNING: THE CALIFORNIA DEPARTMENT OF REAL ESTATE~~ *DEPARTMENT OF FINANCIAL SERVICES* HAS NOT INSPECTED, EXAMINED, OR QUALIFIED THIS OFFERING.

(b) If an offer on property described in subdivision (a) is not initially made in writing, the disclaimer set forth in subdivision (c) shall be received by the offeree in writing prior to a visit to a location, sales presentation, or contact with a person representing the offeror, when the visit or contact was scheduled or arranged by the offeror or its representative. The deposit of the disclaimer in the United States mail, addressed to the offeree and with first-class postage prepaid, at least five days prior to the scheduled

1 or arranged visit or contact, shall be deemed to constitute delivery
2 for purposes of this section.

3 (c) If a California resident is presented with an agreement or
4 contract to lease or purchase any property described in subdivision
5 (a), where an offer to lease or purchase that property was made to
6 that resident in California, a copy of the disclaimer set forth in this
7 subdivision shall be inserted in at least 10-point type at the top of
8 the first page of that agreement or contract and shall be initialed
9 by that California resident.

10
11 ~~WARNING: THE CALIFORNIA DEPARTMENT OF REAL~~
12 ~~ESTATE DEPARTMENT OF FINANCIAL SERVICES HAS NOT~~
13 ~~QUALIFIED, INSPECTED, OR EXAMINED THIS OFFERING,~~
14 ~~INCLUDING, BUT NOT LIMITED TO, THE CONDITION OF~~
15 ~~TITLE, THE STATUS OF BLANKET LIENS ON THE PROJECT~~
16 ~~(IF ANY), ARRANGEMENTS TO ASSURE PROJECT~~
17 ~~COMPLETION, ESCROW PRACTICES, CONTROL OVER~~
18 ~~PROJECT MANAGEMENT, RACIALLY DISCRIMINATORY~~
19 ~~PRACTICES (IF ANY), TERMS, CONDITIONS, AND PRICE~~
20 ~~OF THE OFFER, CONTROL OVER ANNUAL ASSESSMENTS~~
21 ~~(IF ANY), OR THE AVAILABILITY OF WATER, SERVICES,~~
22 ~~UTILITIES, OR IMPROVEMENTS. IT MAY BE ADVISABLE~~
23 ~~FOR YOU TO CONSULT AN ATTORNEY OR OTHER~~
24 ~~KNOWLEDGEABLE PROFESSIONAL WHO IS FAMILIAR~~
25 ~~WITH REAL ESTATE AND DEVELOPMENT LAW IN THE~~
26 ~~STATE WHERE THIS SUBDIVISION IS SITUATED.~~

27
28 *SEC. 47. Section 10249.9 of the Business and Professions Code*
29 *is amended to read:*

30 10249.9. (a) Notwithstanding any provision to the contrary in
31 Section 10249 or 11000, it is unlawful for a person, in this state,
32 to sell or lease or offer for sale or lease a lot, parcel, or interest in
33 a subdivision, located outside the United States, unless the printed
34 material, literature, advertising, or invitation in this state relating
35 to that sale, lease, or offer clearly and conspicuously contains the
36 following disclaimer in at least 10-point capital type:

37
38 ~~WARNING: THE CALIFORNIA DEPARTMENT OF REAL~~
39 ~~ESTATE DEPARTMENT OF FINANCIAL SERVICES HAS NOT~~
40 ~~EXAMINED THIS OFFERING, INCLUDING, BUT NOT~~

1 LIMITED TO, THE CONDITION OF TITLE, THE STATUS OF
2 BLANKET LIENS ON THE PROJECT (IF ANY),
3 ARRANGEMENTS TO ASSURE PROJECT COMPLETION,
4 ESCROW PRACTICES, CONTROL OVER PROJECT
5 MANAGEMENT, RACIALLY DISCRIMINATORY
6 PRACTICES (IF ANY), TERMS, CONDITIONS, AND PRICE
7 OF THE OFFER, CONTROL OVER ANNUAL ASSESSMENTS
8 (IF ANY), OR THE AVAILABILITY OF WATER, SERVICES,
9 UTILITIES, OR IMPROVEMENTS. IT MAY BE ADVISABLE
10 FOR YOU TO CONSULT AN ATTORNEY OR OTHER
11 KNOWLEDGEABLE PROFESSIONAL WHO IS FAMILIAR
12 WITH REAL ESTATE AND DEVELOPMENT LAW IN THE
13 COUNTRY WHERE THIS SUBDIVISION IS SITUATED.

14
15 (b) If an offer on property described in subdivision (a) is not
16 initially made in writing, the foregoing disclaimer shall be received
17 by the offeree in writing prior to a visit to a location, sales
18 presentation, or contact with a person representing the offeror,
19 when the visit or contact was scheduled or arranged by the offeror
20 or its representative. The deposit of the disclaimer in the United
21 States mail, addressed to the offeree and with first-class postage
22 prepaid, at least five days prior to the scheduled or arranged visit
23 or contact, shall be deemed to constitute delivery for purposes of
24 this section.

25 (c) If any California resident is presented with an agreement or
26 contract to lease or purchase a property described in subdivision
27 (a), where an offer to lease or purchase that property was made to
28 that resident in California, a copy of the disclaimer set forth in
29 subdivision (a) shall be inserted in at least 10-point type at the top
30 of the first page of that agreement or contract and shall be initialed
31 by that California resident.

32 *SEC. 48. Section 10451.5 of the Business and Professions Code*
33 *is amended to read:*

34 10451.5. (a) All money paid into the State Treasury and
35 credited to the Education and Research Account in the Real Estate
36 Fund pursuant to Section 10450.6 is available for appropriation
37 by the Legislature to be used by the commissioner in carrying out
38 the provisions of this part and Chapter 1 (commencing with Section
39 11000) of Part 2, in the advancement of education and research in
40 real estate at the University of California, state colleges and

1 community colleges, or in contracting for a particular research
2 project in the field of real estate for the state with any university
3 in the State of California accredited by the Western Association
4 of Schools and Colleges, or with any corporation or association
5 qualified to perform such research.

6 (b) If the balance in the Education and Research Account is
7 more than four hundred thousand dollars (\$400,000), the ~~Real~~
8 ~~Estate~~ Commissioner of *Financial Services* may authorize the
9 transfer of all or part of such surplus amount to the Real Estate
10 Fund and may authorize the return to the Education and Research
11 Account of all or part of any amount previously transferred to the
12 Real Estate Fund.

13 (c) Notwithstanding the provisions of subdivision (b), if at any
14 time the amount of funds credited to the Real Estate Fund,
15 including any amounts credited to the separate accounts for
16 Education and Research and Recovery, is less than 25 percent of
17 the department's authorized expenditures for the following fiscal
18 year, the commissioner may transfer any or all of the funds credited
19 to the Education and Research Account to the Real Estate Fund.
20 The commissioner may authorize the return to the Education and
21 Research Account of all or part of any amount previously
22 transferred to the Real Estate Fund.

23 *SEC. 49. Section 10470.1 of the Business and Professions Code*
24 *is amended to read:*

25 10470.1. (a) In addition to the amount paid into the Recovery
26 Account as set forth in Section 10450.6, the ~~Real Estate~~
27 Commissioner of *Financial Services* may authorize the transfer
28 from the Real Estate Fund to the Recovery Account of any amounts
29 as are deemed necessary.

30 (b) If the balance remaining in the Recovery Account contains
31 more than four hundred thousand dollars (\$400,000), the
32 commissioner may authorize the transfer of all or part of the surplus
33 amount into the Real Estate Fund.

34 (c) The commissioner may authorize the return to the Recovery
35 Account of all or any amount previously transferred to the Real
36 Estate Fund under this section.

37 *SEC. 50. Section 10471 of the Business and Professions Code*
38 *is amended to read:*

39 10471. (a) When an aggrieved person obtains (1) a final
40 judgment in a court of competent jurisdiction, including, but not

1 limited to, a criminal restitution order issued pursuant to
2 subdivision (f) of Section 1202.4 of the Penal Code or Section
3 3663 of Title 18 of the United States Code, or (2) an arbitration
4 award that includes findings of fact and conclusions of law
5 rendered in accordance with the rules established by the American
6 Arbitration Association or another recognized arbitration body,
7 and in accordance with Sections 1281 to 1294.2, inclusive, of the
8 Code of Civil Procedure where applicable, and where the
9 arbitration award has been confirmed and reduced to judgment
10 pursuant to Section 1287.4 of the Code of Civil Procedure, against
11 a defendant based upon the defendant's fraud, misrepresentation,
12 or deceit, made with intent to defraud, or conversion of trust funds,
13 arising directly out of any transaction in which the defendant, while
14 licensed under this part, performed acts for which a real estate
15 license was required, the aggrieved person may, upon the judgment
16 becoming final, file an application with the Department of ~~Real~~
17 *Estate Financial Services* for payment from the Recovery Account,
18 within the limitations specified in Section 10474, of the amount
19 unpaid on the judgment that represents an actual and direct loss
20 to the claimant in the transaction. As used in this chapter, "court
21 of competent jurisdiction" includes the federal courts, but does
22 not include the courts of another state.

23 (b) The application shall be delivered in person or by certified
24 mail to an office of the department not later than one year after
25 the judgment has become final.

26 (c) The application shall be made on a form prescribed by the
27 department, verified by the claimant, and shall include the
28 following:

29 (1) The name and address of the claimant.

30 (2) If the claimant is represented by an attorney, the name,
31 business address, and telephone number of the attorney.

32 (3) The identification of the judgment, the amount of the claim
33 and an explanation of its computation.

34 (4) A detailed narrative statement of the facts in explanation of
35 the allegations of the complaint upon which the underlying
36 judgment is based.

37 (5) (A) Except as provided in subparagraph (B), a statement
38 by the claimant, signed under penalty of perjury, that the complaint
39 upon which the underlying judgment is based was prosecuted
40 conscientiously and in good faith. As used in this section,

1 “conscientiously and in good faith” means that no party potentially
2 liable to the claimant in the underlying transaction was intentionally
3 and without good cause omitted from the complaint, that no party
4 named in the complaint who otherwise reasonably appeared capable
5 of responding in damages was dismissed from the complaint
6 intentionally and without good cause, and that the claimant
7 employed no other procedural means contrary to the diligent
8 prosecution of the complaint in order to seek to qualify for the
9 Recovery Account.

10 (B) For the purpose of an application based on a criminal
11 restitution order, all of the following statements by the claimant:

12 (i) The claimant has not intentionally and without good cause
13 failed to pursue any person potentially liable to the claimant in the
14 underlying transaction other than a defendant who is the subject
15 of a criminal restitution order.

16 (ii) The claimant has not intentionally and without good cause
17 failed to pursue in a civil action for damages all persons potentially
18 liable to the claimant in the underlying transaction who otherwise
19 reasonably appeared capable of responding in damages other than
20 a defendant who is the subject of a criminal restitution order.

21 (iii) The claimant employed no other procedural means contrary
22 to the diligent prosecution of the complaint in order to seek to
23 qualify for the Recovery Account.

24 (6) The name and address of the judgment debtor or, if not
25 known, the names and addresses of persons who may know the
26 judgment debtor’s present whereabouts.

27 (7) The following representations and information from the
28 claimant:

29 (A) That he or she is not a spouse of the judgment debtor nor a
30 personal representative of the spouse.

31 (B) That he or she has complied with all of the requirements of
32 this chapter.

33 (C) That the judgment underlying the claim meets the
34 requirements of subdivision (a).

35 (D) A description of searches and inquiries conducted by or on
36 behalf of the claimant with respect to the judgment debtor’s assets
37 liable to be sold or applied to satisfaction of the judgment, an
38 itemized valuation of the assets discovered, and the results of
39 actions by the claimant to have the assets applied to satisfaction
40 of the judgment.

1 (E) That he or she has diligently pursued collection efforts
2 against all judgment debtors and all other persons liable to the
3 claimant in the transaction that is the basis for the underlying
4 judgment.

5 (F) That the underlying judgment and debt have not been
6 discharged in bankruptcy, or, in the case of a bankruptcy
7 proceeding that is open at or after the time of the filing of the
8 application, that the judgment and debt have been declared to be
9 nondischargeable.

10 (G) That the application was mailed or delivered to the
11 department no later than one year after the underlying judgment
12 became final.

13 (d) If the claimant is basing his or her application upon a
14 judgment against a salesperson, and the claimant has not obtained
15 a judgment against that salesperson's employing broker, if any, or
16 has not diligently pursued the assets of that broker, the application
17 shall be denied for failure to diligently pursue the assets of all other
18 persons liable to the claimant in the transaction unless the claimant
19 can demonstrate, by clear and convincing evidence, either that the
20 salesperson was not employed by a broker at the time of the
21 transaction, or that the salesperson's employing broker would not
22 have been liable to the claimant because the salesperson was acting
23 outside the scope of his or her employment by the broker in the
24 transaction.

25 (e) The application form shall include detailed instructions with
26 respect to documentary evidence, pleadings, court rulings, the
27 products of discovery in the underlying litigation, and a notice to
28 the applicant of his or her obligation to protect the underlying
29 judgment from discharge in bankruptcy, to be appended to the
30 application.

31 (f) An application for payment from the Recovery Account that
32 is based on a criminal restitution order shall comply with all of the
33 requirements of this chapter. For the purpose of an application
34 based on a criminal restitution order, the following terms have the
35 following meanings:

36 (1) "Judgment" means the criminal restitution order.

37 (2) "Complaint" means the facts of the underlying transaction
38 upon which the criminal restitution order is based.

39 (3) "Judgment debtor" means any defendant who is the subject
40 of the criminal restitution order.

1 The amendments to this section made at the July 1997–98
2 Regular Session shall become operative July 1, 2000.

3 *SEC. 51. Section 10471.5 of the Business and Professions Code*
4 *is amended to read:*

5 10471.5. (a) The commissioner shall give notice of a decision
6 rendered with respect to the application to the claimant and to a
7 judgment debtor who has filed a timely response to the application
8 in accordance with Section 10471.1.

9 (b) If the application is denied, the notice to the claimant and
10 judgment debtor shall include the following:

11 “Claimant’s application has been denied. If the claimant wishes
12 to pursue the application in court, the claimant must file the
13 application as follows in a superior court of this state not later than
14 six months after receipt of this notice, pursuant to Section 10472
15 of the Business and Professions Code. If the underlying judgment
16 is a California state court judgment, the application shall be filed
17 in the court in which the underlying judgment was entered. If the
18 underlying judgment is a federal court judgment, the application
19 shall be filed in the superior court of any county within California
20 that would have been a proper venue if the underlying lawsuit had
21 been filed in a California state court, or in the Superior Court of
22 the County of Sacramento.”

23 (c) If the decision of the commissioner is to make a payment to
24 the claimant out of the Recovery Account, the following notice
25 shall be given to the judgment debtor along with a copy of the
26 decision of the commissioner:

27 “The decision of the ~~Real Estate~~ Commissioner of *Financial*
28 *Services* on the application of ____ is to pay \$____ from the
29 Recovery Account. A copy of that decision is enclosed.

30 “Pursuant to Section 10475 of the Business and Professions
31 Code, all of your licenses and license rights under the Real Estate
32 Law will be suspended effective on the date of the payment, and
33 you will not be eligible for reinstatement of any license issued
34 under authority of the Real Estate Law until you have reimbursed
35 the Recovery Account for this payment plus interest at the
36 prevailing legal rate.”

37 “If you desire a judicial review of the suspension of your licenses
38 and license rights, you may petition the superior court for a writ
39 of mandamus. If the underlying judgment is a California state court
40 judgment, the petition shall be filed in the court in which the

1 judgment was entered. If the underlying judgment is a federal court
2 judgment, the petition shall be filed in the superior court of any
3 county within California that would have been a proper venue if
4 the underlying lawsuit had been filed in a California state court,
5 or in the Superior Court of the County of Sacramento. To be timely,
6 the petition must be filed with the court within 30 days of receipt
7 of this notice.”

8 *SEC. 52. Section 10472 of the Business and Professions Code*
9 *is amended to read:*

10 10472. (a) A claimant against whom the commissioner has
11 rendered a decision denying an application pursuant to Section
12 10471 may, within six months after the mailing of the notice of
13 the denial, file a verified application in superior court for an Order
14 Directing Payment Out of the Recovery Account based upon the
15 grounds set forth in the application to the commissioner. If the
16 underlying judgment is a California state court judgment, the
17 application shall be filed in the court in which the underlying
18 judgment was entered. If the underlying judgment is a federal court
19 judgment, the application shall be filed in the superior court of any
20 county within California that would have been a proper venue if
21 the underlying lawsuit had been filed in a California state court,
22 or in the Superior Court of the County of Sacramento.

23 (b) A copy of the verified application shall be served upon the
24 commissioner and upon the judgment debtor. A certificate or
25 affidavit of service shall be filed by the claimant with the court.
26 Service on the commissioner may be made by certified mail
27 addressed to the headquarters office of the department. Service
28 upon a judgment debtor may be made in accordance with Section
29 10471.1. The notice served upon the judgment debtor shall read
30 as follows:

31 “NOTICE: An application has been filed with the court for a
32 payment from the Recovery Account that was previously denied
33 by the ~~Real Estate~~ Commissioner of *Financial Services*.

34 “If the Department of ~~Real Estate~~ *Financial Services* makes a
35 payment from the Recovery Account pursuant to court order, all
36 of your licenses and license rights under the Real Estate Law will
37 be automatically suspended until the Recovery Account has been
38 reimbursed for the amount paid plus interest at the prevailing rate.

39 “If you wish to defend in court against this application, you must
40 file a written response with the court within 30 days after having

1 been served with a copy of the application. If you do not file a
2 written response, you will have waived your right to defend against
3 the application.”

4 *SEC. 53. Section 10501 of the Business and Professions Code*
5 *is amended to read:*

6 10501. (a) ~~The Real Estate~~ Commissioner of Financial Services
7 may file a complaint for any violation of Section 10500 or 10500.5
8 before any court of competent jurisdiction, and the commissioner
9 and the commissioner’s counsel, deputies or assistants may assist
10 in presenting the law or facts at the trial.

11 (b) It is the duty of the district attorney of the county in which
12 a violation of Section 10500 or 10500.5 occurs to prosecute the
13 violation.

14 (c) A natural person convicted of a violation of Section 10500
15 or 10500.5 shall be punished by a fine of not to exceed five hundred
16 dollars (\$500) or by imprisonment in the county jail for a term not
17 to exceed six months, or by both such fine and imprisonment, in
18 the discretion of the court. A corporation convicted of a violation
19 of Section 10500 or 10500.5 shall be punished by a fine of not to
20 exceed five thousand dollars (\$5,000).

21 *SEC. 54. Section 11000.1 of the Business and Professions Code*
22 *is amended to read:*

23 11000.1. (a) “Subdivided lands” and “subdivision,” as defined
24 by Sections 11000 and 11004.5, also include improved or
25 unimproved land or lands, a lot or lots, or a parcel or parcels, of
26 any size, in which, for the purpose of sale or lease or financing,
27 whether immediate or future, five or more undivided interests are
28 created or are proposed to be created.

29 (b) This section does not apply to the creation or proposed
30 creation of undivided interests in land if any one of the following
31 conditions exists:

32 (1) The undivided interests are held or to be held by persons
33 related one to the other by blood or marriage.

34 (2) The undivided interests are to be purchased and owned solely
35 by persons who present evidence satisfactory to the ~~Real Estate~~
36 Commissioner of Financial Services that they are knowledgeable
37 and experienced investors who comprehend the nature and extent
38 of the risks involved in the ownership of these interests. The ~~Real~~
39 Estate Commissioner of Financial Services shall grant an
40 exemption from this part if the undivided interests are to be

1 purchased by no more than 10 persons, each of whom furnishes a
2 signed statement to the commissioner that he or she (A) is fully
3 informed concerning the real property to be acquired and his or
4 her interest in that property including the risks involved in
5 ownership of undivided interests, (B) is purchasing the interest or
6 interests for his or her own account and with no present intention
7 to resell or otherwise dispose of the interest for value, and (C)
8 expressly waives protections afforded to a purchaser by this part.

9 (3) The undivided interests are created as the result of a
10 foreclosure sale.

11 (4) The undivided interests are created by a valid order or decree
12 of a court.

13 (5) The offering and sale of the undivided interests have been
14 expressly qualified by the issuance of a permit from the
15 Commissioner of ~~Corporations~~ *Financial Services* pursuant to the
16 Corporate Securities Law of 1968 (Division 1 (commencing with
17 Section 25000) of Title 4 of the Corporations Code).

18 *SEC. 55. Section 11000.2 of the Business and Professions Code*
19 *is amended to read:*

20 11000.2. (a) A person who has made an offer to purchase an
21 interest in an undivided-interest subdivision specified in
22 subdivision (a) of, and not exempted by subdivision (b) of, Section
23 11000.1 shall have the right to rescind any contract resulting from
24 the acceptance of that offer until midnight of the third calendar
25 day following the day on which the prospective purchaser executed
26 the offer to purchase.

27 (b) The owner of a subdivision subject to this section or his or
28 her agent shall, in accordance with regulations adopted by the ~~Real~~
29 ~~Estate~~ *Commissioner of Financial Services*, clearly and
30 conspicuously disclose to all prospective purchasers of undivided
31 interests the right of rescission provided for in subdivision (a), and
32 shall furnish to each offeror a form, as prescribed by regulations
33 of the commissioner, for the exercise of the right of rescission.

34 (c) Any certificate bearing the signature of the purchaser of an
35 interest in an undivided-interest subdivision subject to this section
36 which contains an adequate description of the interest or interests
37 sold and a statement by the purchaser that he or she has not
38 exercised the right of rescission within the time limit set forth in
39 subdivision (a) shall constitute conclusive evidence that the right
40 of rescission has not been exercised in any matter involving the

1 rights of a third party who has acted in good faith in reliance upon
2 representations in the certificate.

3 *SEC. 56. Section 11001 of the Business and Professions Code*
4 *is amended to read:*

5 11001. The ~~Real Estate~~ Commissioner of *Financial Services*
6 (hereafter referred to in this chapter as the commissioner) may
7 adopt, amend, or repeal such rules and regulations as are reasonably
8 necessary for the enforcement of this chapter. He *or she* may issue
9 any order, permit, decision, demand, or requirement to effect this
10 purpose. Such rules, regulations, and orders shall be adopted
11 pursuant to the provisions of the Administrative Procedure Act.

12 *SEC. 57. Section 11003.4 of the Business and Professions Code*
13 *is amended to read:*

14 11003.4. (a) A “limited-equity housing cooperative” is a
15 corporation which meets the criteria of Section 11003.2 and which
16 also meets the criteria of Section 33007.5 of the Health and Safety
17 Code. Except as provided in subdivision (b), a limited-equity
18 housing cooperative shall be subject to all the requirements of this
19 chapter pertaining to stock cooperatives.

20 (b) A limited-equity housing cooperative shall be exempt from
21 the requirements of this chapter if the limited-equity housing
22 cooperative complies with all the following conditions:

23 (1) The United States Department of Housing and Urban
24 Development, the Farmers Home Administration, the National
25 Consumers Cooperative Bank, the California Housing Finance
26 Agency, or the Department of Housing and Community
27 Development, alone or in any combination with each other, or with
28 the city, county, or redevelopment agency in which the cooperative
29 is located, directly finances or subsidizes at least 50 percent of the
30 total construction or development cost or one hundred thousand
31 dollars (\$100,000), whichever is less; or the real property to be
32 occupied by the cooperative was sold by the Department of
33 Transportation for the development of the cooperative and has a
34 regulatory agreement approved by the Department of Housing and
35 Community Development for the term of the permanent financing,
36 notwithstanding the source of the permanent subsidy or financing.

37 (2) No more than 20 percent of the total development cost of a
38 limited-equity mobilehome park, and no more than 10 percent of
39 the total development cost of other limited-equity housing
40 cooperatives, is provided by purchasers of membership shares.

1 (3) A regulatory agreement which covers the cooperative for a
2 term of at least as long as the duration of the permanent financing
3 or subsidy, notwithstanding the source of the permanent subsidy
4 or financing has been duly executed between the recipient of the
5 financing and either (A) one of the federal or state agencies
6 specified in paragraph (1) or (B) a local public agency which is
7 providing financing for the project under a regulatory agreement
8 meeting standards of the Department of Housing and Community
9 Development. The regulatory agreement shall make provision for
10 at least all of the following:

11 (A) Assurances for completion of the common areas and
12 facilities to be owned or leased by the limited-equity housing
13 cooperative, unless a construction agreement between the same
14 parties contains written assurances for completion.

15 (B) Governing instruments for the organization and operation
16 of the housing cooperative by the members.

17 (C) The ongoing fiscal management of the project by the
18 cooperative, including an adequate budget, reserves, and provisions
19 for maintenance and management.

20 (D) Distribution of a membership information report to any
21 prospective purchaser of a membership share, prior to purchase
22 of that share. The membership information report shall contain
23 full disclosure of the financial obligations and responsibilities of
24 cooperative membership, the resale of shares, the financing of the
25 cooperative including any arrangements made with any partners,
26 membership share accounts, occupancy restrictions, management
27 arrangements, and any other information pertinent to the benefits,
28 risks, and obligations of cooperative ownership.

29 (4) The federal, state, or local public agency which executes
30 the regulatory agreement shall satisfy itself that the bylaws, articles
31 of incorporation, occupancy agreement, subscription agreement,
32 any lease of the regulated premises, any arrangement with partners,
33 and arrangement for membership share accounts provide adequate
34 protection of the rights of cooperative members.

35 (5) The federal or state agency shall receive from the attorney
36 for the recipient of the financing or subsidy a legal opinion that
37 the cooperative meets the requirements of Section 33007.5 of the
38 Health and Safety Code and the exemption provided by this section.

1 (c) Any limited-equity cooperative which meets the requirements
2 for exemption pursuant to subdivision (b) may elect to be subject
3 to all provisions of this chapter.

4 (d) The developer of the cooperative shall notify the Department
5 of ~~Real Estate~~ *Financial Services*, on a form provided by the
6 department, that an exemption is claimed under this section. The
7 Department of ~~Real Estate~~ *Financial Services* shall retain this form
8 for at least four years for statistical purposes.

9 *SEC. 58. Section 11010 of the Business and Professions Code*
10 *is amended to read:*

11 11010. (a) Except as otherwise provided pursuant to
12 subdivision (c) or elsewhere in this chapter, any person who intends
13 to offer subdivided lands within this state for sale or lease shall
14 file with the Department of ~~Real Estate~~ *Financial Services* an
15 application for a public report consisting of a notice of intention
16 and a completed questionnaire on a form prepared by the
17 department.

18 (b) The notice of intention shall contain the following
19 information about the subdivided lands and the proposed offering:

20 (1) The name and address of the owner.
21 (2) The name and address of the subdivider.
22 (3) The legal description and area of lands.
23 (4) A true statement of the condition of the title to the land,
24 particularly including all encumbrances thereon.

25 (5) A true statement of the terms and conditions on which it is
26 intended to dispose of the land, together with copies of any
27 contracts intended to be used.

28 (6) A true statement of the provisions, if any, that have been
29 made for public utilities in the proposed subdivision, including
30 water, electricity, gas, telephone, and sewerage facilities. For
31 subdivided lands that were subject to the imposition of a condition
32 pursuant to subdivision (b) of Section 66473.7 of the Government
33 Code, the true statement of the provisions made for water shall be
34 satisfied by submitting a copy of the written verification of the
35 available water supply obtained pursuant to Section 66473.7 of
36 the Government Code.

37 (7) A true statement of the use or uses for which the proposed
38 subdivision will be offered.

39 (8) A true statement of the provisions, if any, limiting the use
40 or occupancy of the parcels in the subdivision.

1 (9) A true statement of the amount of indebtedness that is a lien
2 upon the subdivision or any part thereof, and that was incurred to
3 pay for the construction of any onsite or offsite improvement, or
4 any community or recreational facility.

5 (10) A true statement or reasonable estimate, if applicable, of
6 the amount of any indebtedness which has been or is proposed to
7 be incurred by an existing or proposed special district, entity, taxing
8 area, assessment district, or community facilities district within
9 the boundaries of which, the subdivision, or any part thereof, is
10 located, and that is to pay for the construction or installation of
11 any improvement or to furnish community or recreational facilities
12 to that subdivision, and which amounts are to be obtained by ad
13 valorem tax or assessment, or by a special assessment or tax upon
14 the subdivision, or any part thereof.

15 (11) A notice pursuant to Section 1102.6c of the Civil Code.

16 (12) (A) As to each school district serving the subdivision, a
17 statement from the appropriate district that indicates the location
18 of each high school, junior high school, and elementary school
19 serving the subdivision, or documentation that a statement to that
20 effect has been requested from the appropriate school district.

21 (B) In the event that, as of the date the notice of intention and
22 application for issuance of a public report are otherwise deemed
23 to be qualitatively and substantially complete pursuant to Section
24 11010.2, the statement described in subparagraph (A) has not been
25 provided by any school district serving the subdivision, the person
26 who filed the notice of intention and application for issuance of a
27 public report shall immediately provide the department with the
28 name, address, and telephone number of that district.

29 (13) (A) The location of all existing airports, and of all proposed
30 airports shown on the general plan of any city or county, located
31 within two statute miles of the subdivision. If the property is
32 located within an airport influence area, the following statement
33 shall be included in the notice of intention:

34
35 NOTICE OF AIRPORT IN VICINITY
36

37 This property is presently located in the vicinity of an
38 airport, within what is known as an airport influence area. For that
39 reason, the property may be subject to some of the annoyances or
40 inconveniences associated with proximity to airport operations

NOTICE OF AIRPORT IN VICINITY

(for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

(B) For purposes of this section, an “airport influence area,” also known as an “airport referral area,” is the area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by an airport land use commission.

(14) A true statement, if applicable, referencing any soils or geologic report or soils and geologic reports that have been prepared specifically for the subdivision.

(15) A true statement of whether or not fill is used, or is proposed to be used, in the subdivision and a statement giving the name and the location of the public agency where information concerning soil conditions in the subdivision is available.

(16) On or after July 1, 2005, as to property located within the jurisdiction of the San Francisco Bay Conservation and Development Commission, a statement that the property is so located and the following notice:

NOTICE OF SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION JURISDICTION

This property is located within the jurisdiction of the San Francisco Bay Conservation and Development Commission. Use and development of property within the commission’s jurisdiction may be subject to special regulations, restrictions, and permit requirements. You may wish to investigate and determine whether they are acceptable to you and your intended use of the property before you complete your transaction.

(17) If the property is presently located within one mile of a parcel of real property designated as “Prime Farmland,” “Farmland of Statewide Importance,” “Unique Farmland,” “Farmland of Local Importance,” or “Grazing Land” on the most current “Important Farmland Map” issued by the California Department of Conservation, Division of Land Resource Protection, utilizing

1 solely the county-level GIS map data, if any, available on the
2 Farmland Mapping and Monitoring Program Website. If the
3 residential property is within one mile of a designated farmland
4 area, the report shall contain the following notice:

5
6 NOTICE OF RIGHT TO FARM

7 This property is located within one mile of a farm or ranch land
8 designated on the current county-level GIS “Important Farmland
9 Map,” issued by the California Department of Conservation,
10 Division of Land Resource Protection. Accordingly, the property
11 may be subject to inconveniences or discomforts resulting from
12 agricultural operations that are a normal and necessary aspect of
13 living in a community with a strong rural character and a healthy
14 agricultural sector. Customary agricultural practices in farm
15 operations may include, but are not limited to, noise, odors, dust,
16 light, insects, the operation of pumps and machinery, the storage
17 and disposal of manure, bee pollination, and the ground or aerial
18 application of fertilizers, pesticides, and herbicides. These
19 agricultural practices may occur at any time during the 24-hour
20 day. Individual sensitivities to those practices can vary from person
21 to person. You may wish to consider the impacts of such
22 agricultural practices before you complete your purchase. Please
23 be advised that you may be barred from obtaining legal remedies
24 against agricultural practices conducted in a manner consistent
25 with proper and accepted customs and standards pursuant to
26 Section 3482.5 of the Civil Code or any pertinent local ordinance.

27 (18) Any other information that the owner, his or her agent, or
28 the subdivider may desire to present.

29 (c) The commissioner may, by regulation, or on the basis of the
30 particular circumstances of a proposed offering, waive the
31 requirement of the submission of a completed questionnaire if the
32 commissioner determines that prospective purchasers or lessees
33 of the subdivision interests to be offered will be adequately
34 protected through the issuance of a public report based solely upon
35 information contained in the notice of intention.

36 *SEC. 59. Section 11011 of the Business and Professions Code*
37 *is amended to read:*

38 11011. (a) The commissioner may by regulation prescribe
39 filing fees in connection with applications to the Department of
40 ~~Real Estate~~ *Financial Services* pursuant to this chapter that are

1 lower than the maximum fees specified in subdivision (b) if the
2 commissioner determines that the lower fees are sufficient to offset
3 the costs and expenses incurred in the administration of this
4 chapter. The commissioner shall hold at least one hearing each
5 calendar year to determine if lower fees than those specified in
6 subdivision (b) should be prescribed.

7 (b) The filing fee for an application for a public report to be
8 issued under authority of this chapter shall not exceed the following
9 for each subdivision or phase of a subdivision in which interests
10 are to be offered for sale or lease:

11 (1) A notice of intention without a completed questionnaire:
12 One hundred fifty dollars (\$150).

13 (2) An original public report for subdivision interests described
14 in Section 11004.5: One thousand seven hundred dollars (\$1,700)
15 plus ten dollars (\$10) for each subdivision interest to be offered.

16 (3) An original public report for subdivision interests other than
17 those described in Section 11004.5: Six hundred dollars (\$600)
18 plus ten dollars (\$10) for each subdivision interest to be offered.

19 (4) A conditional public report for subdivision interests
20 described in Section 11004.5: Five hundred dollars (\$500).

21 (5) A conditional public report for subdivision interests other
22 than those described in Section 11004.5: Five hundred dollars
23 (\$500).

24 (6) A preliminary public report for subdivision interests
25 described in Section 11004.5: Five hundred dollars (\$500).

26 (7) A preliminary public report for subdivision interests other
27 than those described in Section 11004.5: Five hundred dollars
28 (\$500).

29 (8) A renewal public report for subdivision interests described
30 in Section 11004.5: Six hundred dollars (\$600).

31 (9) A renewal public report for subdivision interests other than
32 those described in Section 11004.5: Six hundred dollars (\$600).

33 (10) An amended public report for subdivision interests
34 described in Section 11004.5: Five hundred dollars (\$500) plus
35 ten dollars (\$10) for each subdivision interest to be offered under
36 the amended public report for which a fee has not previously been
37 paid.

38 (11) An amended public report to offer subdivision interests
39 other than those described in Section 11004.5: Five hundred dollars
40 (\$500) plus ten dollars (\$10) for each subdivision interest to be

1 offered under the amended public report for which a fee has not
2 previously been paid.

3 (c) The filing fee to review a declaration as described in Section
4 11010.10 shall not exceed two hundred dollars (\$200).

5 (d) The actual subdivision fees established by regulation under
6 authority of this section and Section 10249.3 shall not exceed the
7 amount reasonably required by the department to administer this
8 part and Article 8 (commencing with Section 10249) of Chapter
9 3 of Part 1.

10 (e) All fees collected by the department under authority of this
11 chapter shall be deposited into the Real Estate Fund under Chapter
12 6 (commencing with Section 10450) of Part 1. All fees received
13 by the department pursuant to this chapter shall be deemed earned
14 upon receipt. No part of any fee is refundable unless the
15 commissioner determines that it was paid as the result of a mistake
16 or inadvertence.

17 This section shall remain in effect unless it is superseded
18 pursuant to Section 10226 or subdivision (a) of Section 10226.5,
19 whichever is applicable.

20 *SEC. 60. Section 11012 of the Business and Professions Code*
21 *is amended to read:*

22 11012. It is unlawful for the owner, his *or her* agent, or
23 subdivider, of the project, after it is submitted to the Department
24 of ~~Real Estate~~ *Financial Services*, to materially change the setup
25 of such offering without first notifying the Department of ~~Real~~
26 ~~Estate~~ *Financial Services* in writing of such intended change. This
27 section only applies to those changes of which the owner, his *or*
28 *her* agent, or subdivider has knowledge or constructive knowledge.

29 *SEC. 61. Section 11018 of the Business and Professions Code*
30 *is amended to read:*

31 11018. The ~~Real Estate~~ *Commissioner of Financial Services*
32 shall make an examination of any subdivision, and shall, unless
33 there are grounds for denial, issue to the subdivider a public report
34 authorizing the sale or lease in this state of the lots or parcels within
35 the subdivision. The report shall contain the data obtained in
36 accordance with Section 11010 and which the commissioner
37 determines are necessary to implement the purposes of this article.
38 The commissioner may publish the report.

39 The grounds for denial are:

1 (a) Failure to comply with any of the provisions in this chapter
2 or the regulations of the commissioner pertaining thereto.

3 (b) The sale or lease would constitute misrepresentation to or
4 deceit or fraud of the purchasers or lessees.

5 (c) Inability to deliver title or other interest contracted for.

6 (d) Inability to demonstrate that adequate financial arrangements
7 have been made for all offsite improvements included in the
8 offering.

9 (e) Inability to demonstrate that adequate financial arrangements
10 have been made for any community, recreational or other facilities
11 included in the offering.

12 (f) Failure to make a showing that the parcels can be used for
13 the purpose for which they are offered; and in the case of a
14 subdivision being offered for residential purposes failure to make
15 a showing that vehicular access and a source of potable domestic
16 water either is available or will be available.

17 (g) Failure to provide in the contract or other writing the use or
18 uses for which the parcels are offered, together with any covenants
19 or conditions relative thereto.

20 (h) Agreements or bylaws to provide for management or other
21 services pertaining to common facilities in the offering, which fail
22 to comply with the regulations of the commissioner.

23 (i) Failure to demonstrate that adequate financial arrangements
24 have been made for any guaranty or warranty included in the
25 offering.

26 *SEC. 62. Section 11018.1 of the Business and Professions Code*
27 *is amended to read:*

28 11018.1. (a) A copy of the public report of the commissioner,
29 when issued, shall be given to the prospective purchaser by the
30 owner, subdivider or agent prior to the execution of a binding
31 contract or agreement for the sale or lease of any lot or parcel in
32 a subdivision. The requirement of this section extends to lots or
33 parcels offered by the subdivider after repossession. A receipt shall
34 be taken from the prospective purchaser in a form and manner as
35 set forth in regulations of the ~~Real Estate~~ Commissioner of
36 *Financial Services*.

37 (b) A copy of the public report shall be given by the owner,
38 subdivider or agent at any time, upon oral or written request, to
39 any member of the public. A copy of the public report and a
40 statement advising that a copy of the public report may be obtained

1 from the owner, subdivider or agent at any time, upon oral or
2 written request, shall be posted in a conspicuous place at any office
3 where sales or leases or offers to sell or lease lots within the
4 subdivision are regularly made.

5 (c) At the same time that a public report is required to be given
6 by the owner, subdivider, or agent pursuant to subdivision (a) with
7 respect to a common interest development, as defined, in
8 subdivision (c) of Section 1351 of the Civil Code, the owner,
9 subdivider, or agent shall give the prospective purchaser a copy
10 of the following statement:

11 "COMMON INTEREST DEVELOPMENT GENERAL INFORMATION
12

13 The project described in the attached Subdivision Public Report
14 is known as a common-interest development. Read the public
15 report carefully for more information about the type of
16 development. The development includes common areas and
17 facilities which will be owned or operated by an owners'
18 association. Purchase of a lot or unit automatically entitles and
19 obligates you as a member of the association and, in most cases,
20 includes a beneficial interest in the areas and facilities. Since
21 membership in the association is mandatory, you should be aware
22 of the following information before you purchase:

23 Your ownership in this development and your rights and
24 remedies as a member of its association will be controlled by
25 governing instruments which generally include a Declaration of
26 Restrictions (also known as CC&R's), Articles of Incorporation
27 (or association) and bylaws. The provisions of these documents
28 are intended to be, and in most cases are, enforceable in a court of
29 law. Study these documents carefully before entering into a contract
30 to purchase a subdivision interest.

31 In order to provide funds for operation and maintenance of the
32 common facilities, the association will levy assessments against
33 your lot or unit. If you are delinquent in the payment of
34 assessments, the association may enforce payment through court
35 proceedings or your lot or unit may be liened and sold through the
36 exercise of a power of sale. The anticipated income and expenses
37 of the association, including the amount that you may expect to
38 pay through assessments, are outlined in the proposed budget. Ask
39 to see a copy of the budget if the subdivider has not already made
40 it available for your examination.

1 A homeowner association provides a vehicle for the ownership
2 and use of recreational and other common facilities which were
3 designed to attract you to buy in this development. The association
4 also provides a means to accomplish architectural control and to
5 provide a base for homeowner interaction on a variety of issues.
6 The purchaser of an interest in a common-interest development
7 should contemplate active participation in the affairs of the
8 association. He or she should be willing to serve on the board of
9 directors or on committees created by the board. In short, “they”
10 in a common interest development is “you.” Unless you serve as
11 a member of the governing board or on a committee appointed by
12 the board, your control of the operation of the common areas and
13 facilities is limited to your vote as a member of the association.
14 There are actions that can be taken by the governing body without
15 a vote of the members of the association which can have a
16 significant impact upon the quality of life for association members.

17 Until there is a sufficient number of purchasers of lots or units
18 in a common interest development to elect a majority of the
19 governing body, it is likely that the subdivider will effectively
20 control the affairs of the association. It is frequently necessary and
21 equitable that the subdivider do so during the early stages of
22 development. It is vitally important to the owners of individual
23 subdivision interests that the transition from subdivider to
24 resident-owner control be accomplished in an orderly manner and
25 in a spirit of cooperation.

26 When contemplating the purchase of a dwelling in a common
27 interest development, you should consider factors beyond the
28 attractiveness of the dwelling units themselves. Study the governing
29 instruments and give careful thought to whether you will be able
30 to exist happily in an atmosphere of cooperative living where the
31 interests of the group must be taken into account as well as the
32 interests of the individual. Remember that managing a common
33 interest development is very much like governing a small
34 community ... the management can serve you well, but you will
35 have to work for its success.”

36
37 Failure to provide the statement in accordance with this
38 subdivision shall not be deemed a violation subject to Section
39 10185.

1 *SEC. 63. Section 11018.2 of the Business and Professions Code*
2 *is amended to read:*

3 11018.2. No person shall sell or lease, or offer for sale or lease
4 in this state any lots or parcels in a subdivision without first
5 obtaining a public report from the ~~Real Estate~~ Commissioner of
6 *Financial Services*. This section shall not apply to subdivisions
7 for which a notice of intention is not required under the provisions
8 of this chapter.

9 *SEC. 64. Section 11018.7 of the Business and Professions Code*
10 *is amended to read:*

11 11018.7. (a) No amendment or modification of provisions in
12 the declaration of restrictions, bylaws, articles of incorporation or
13 other instruments controlling or otherwise affecting rights to
14 ownership, possession, or use of interests in subdivisions as defined
15 in Sections 11000.1 and 11004.5 which would materially change
16 those rights of an owner, either directly or as a member of an
17 association of owners, is valid without the prior written consent
18 of the ~~Real Estate~~ Commissioner of *Financial Services* during the
19 period of time when the subdivider or his or her successor in
20 interest holds or directly controls as many as one-fourth of the
21 votes that may be cast to effect that change.

22 (b) The commissioner shall not grant his or her consent to the
23 submission of the proposed change to a vote of owners or members
24 if he or she finds that the change if effected would create a new
25 condition or circumstance that would form the basis for denial of
26 a public report under Sections 11018 or 11018.5.

27 An application for consent may be filed by any interested person
28 on a form prescribed by the commissioner. A filing fee to be fixed
29 by regulation, but not to exceed twenty-five dollars (\$25), shall
30 accompany each application.

31 There shall be no official meeting of owners or members nor
32 any written solicitation of them for the purpose of effectuating a
33 change referred to herein except in accordance with a procedure
34 approved by the commissioner after the application for consent
35 has been filed with him or her; provided, however, that the
36 governing body of the owners association may meet and vote on
37 the question of submission of the proposed change to the
38 commissioner.

39 *SEC. 65. Section 11212 of the Business and Professions Code*
40 *is amended to read:*

11212. As used in this chapter, the following definitions apply:

(a) “Accommodation” means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, or other private or commercial structure containing toilet facilities therein that is designed and available, pursuant to applicable law, for use and occupancy as a residence by one or more individuals, or any unit or berth on a commercial passenger ship, which is included in the offering of a time-share plan.

(b) “Advertisement” means any written, oral, or electronic communication that is directed to or targeted to persons within the state or such a communication made from this state or relating to a time-share plan located in this state and contains a promotion, inducement, or offer to sell a time-share plan, including, but not limited to, brochures, pamphlets, radio and television scripts, electronic media, telephone and direct mail solicitations, and other means of promotion.

(c) “Association” means the organized body consisting of the purchasers of time-share interests in a time-share plan.

(d) “Assessment” means the share of funds required for the payment of common expenses which is assessed from time to time against each purchaser by the managing entity.

(e) “Commissioner” means the ~~Real Estate~~ Commissioner of *Financial Services*.

(f) “Component site” means a specific geographic location where accommodations that are part of a multisite time-share plan are located. Separate phases of a time-share property in a specific geographic location and under common management shall not be deemed a component site.

(g) “Conspicuous type” means either of the following:

(1) Type in upper and lower case letters two point sizes larger than the nearest nonconspicuous type, exclusive of headings, on the page on which it appears but in at least 10-point type.

(2) Conspicuous type may be utilized in contracts for purchase or public permits only where required by law or as authorized by the commissioner.

(h) “Department” means the Department of ~~Real Estate~~ *Financial Services*.

(i) “Developer” means and includes any person who creates a time-share plan or is in the business of selling time-share interests, other than those employees or agents of the developer who sell

1 time-share interests on the developer's behalf, or employs agents
2 to do the same, or any person who succeeds to the interest of a
3 developer by sale, lease, assignment, mortgage, or other transfer,
4 but the term includes only those persons who offer time-share
5 interests for disposition in the ordinary course of business.

6 (j) "Dispose" or "disposition" means a voluntary transfer or
7 assignment of any legal or equitable interest in a time-share plan,
8 other than the transfer, assignment, or release of a security interest.

9 (k) "Exchange company" means any person owning or
10 operating, or both owning and operating, an exchange program.

11 (l) "Exchange program" means any method, arrangement, or
12 procedure for the voluntary exchange of time-share interests or
13 other property interests. The term does not include the assignment
14 of the right to use and occupy accommodations to owners of
15 time-share interests within a single site time-share plan. Any
16 method, arrangement, or procedure that otherwise meets this
17 definition in which the purchaser's total contractual financial
18 obligation exceeds three thousand dollars (\$3,000) per any
19 individual, recurring time-share period, shall be regulated as a
20 time-share plan in accordance with this chapter. For purposes of
21 determining the purchaser's total contractual financial obligation,
22 amounts to be paid as a result of renewals and options to renew
23 shall be included in the term except for the following: (1) amounts
24 to be paid as a result of any optional renewal that a purchaser, in
25 his or her sole discretion may elect to exercise, (2) amounts to be
26 paid as a result of any automatic renewal in which the purchaser
27 has a right to terminate during the renewal period at any time and
28 receive a pro rata refund for the remaining unexpired renewal term,
29 or (3) amounts to be paid as a result of an automatic renewal in
30 which the purchaser receives a written notice no less than 30 nor
31 more than 90 days prior to the date of renewal informing the
32 purchaser of the right to terminate prior to the date of renewal.
33 Notwithstanding these exceptions, if the contractual financial
34 obligation exceeds three thousand dollars (\$3,000) for any
35 three-year period of any renewal term, amounts to be paid as a
36 result of that renewal shall be included in determining the
37 purchaser's total contractual financial obligation.

38 (m) "Incidental benefit" is an accommodation, product, service,
39 discount, or other benefit, other than an exchange program, that
40 is offered to a prospective purchaser of a time-share interest prior

1 to the end of the rescission period set forth in Section 11238, the
2 continuing availability of which for the use and enjoyment of
3 owners of time-share interests in the time-share plan is limited to
4 a term of not more than three years, subject to renewal or extension.
5 The term shall not include an offer of the use of the
6 accommodation, product, service, discount, or other benefit on a
7 free or discounted one-time basis.

8 (n) “Managing entity” means the person who undertakes the
9 duties, responsibilities, and obligations of the management of a
10 time-share plan.

11 (o) “Offer” means any inducement, solicitation, or other attempt,
12 whether by marketing, advertisement, oral or written presentation,
13 or any other means, to encourage a person to acquire a time-share
14 interest in a time-share plan, other than as security for an
15 obligation.

16 (p) “Person” means a natural person, corporation, limited
17 liability company, partnership, joint venture, association, estate,
18 trust, government, governmental subdivision or agency, or other
19 legal entity, or any combination thereof.

20 (q) “Promotion” means a plan or device, including one involving
21 the possibility of a prospective purchaser receiving a vacation,
22 discount vacation, gift, or prize, used by a developer, or an agent,
23 independent contractor, or employee of any of the same on behalf
24 of the developer, in connection with the offering and sale of
25 time-share interests in a time-share plan.

26 (r) “Public report” means a preliminary public report, conditional
27 public report, final public report, or other such disclosure document
28 authorized for use in connection with the offering of time-share
29 interests pursuant to this chapter.

30 (s) “Purchaser” means any person, other than a developer, who
31 by means of a voluntary transfer for consideration acquires a legal
32 or equitable interest in a time-share plan other than as security for
33 an obligation.

34 (t) “Purchase contract” means a document pursuant to which a
35 developer becomes legally obligated to sell, and a purchaser
36 becomes legally obligated to buy, a time-share interest.

37 (u) “Reservation system” means the method, arrangement, or
38 procedure by which a purchaser, in order to reserve the use or
39 occupancy of any accommodation of a multisite time-share plan
40 for one or more time-share periods, is required to compete with

1 other purchasers in the same multisite time-share plan, regardless
2 of whether the reservation system is operated and maintained by
3 the multisite time-share plan managing entity, an exchange
4 company, or any other person. If a purchaser is required to use an
5 exchange program as the purchaser's principal means of obtaining
6 the right to use and occupy accommodations in a multisite
7 time-share plan, that arrangement shall be deemed a reservation
8 system. When an exchange company utilizes a mechanism for the
9 exchange of use of time-share periods among members of an
10 exchange program, that utilization is not a reservation system of
11 a multisite time-share plan.

12 (v) "Short-term product" means the right to use accommodations
13 on a one-time or recurring basis for a period or periods not to
14 exceed 30 days per stay and for a term of three years or less, and
15 that includes an agreement that all or a portion of the consideration
16 paid by a person for the short-term product will be applied to or
17 credited against the price of a future purchase of a time-share
18 interest or that the cost of a future purchase of a time-share interest
19 will be fixed or locked-in at a specified price.

20 (w) "Time-share instrument" means one or more documents,
21 by whatever name denominated, creating or governing the
22 operation of a time-share plan and includes the declaration
23 dedicating accommodations to the time-share plan.

24 (x) "Time-share interest" means and includes either of the
25 following:

26 (1) A "time-share estate," which is the right to occupy a
27 time-share property, coupled with a freehold estate or an estate for
28 years with a future interest in a time-share property or a specified
29 portion thereof.

30 (2) A "time-share use," which is the right to occupy a time-share
31 property, which right is neither coupled with a freehold interest,
32 nor coupled with an estate for years with a future interest, in a
33 time-share property.

34 (y) "Time-share period" means the period or periods of time
35 when the purchaser of a time-share plan is afforded the opportunity
36 to use the accommodations of a time-share plan.

37 (z) "Time-share plan" means any arrangement, plan, scheme,
38 or similar device, other than an exchange program, whether by
39 membership agreement, sale, lease, deed, license, right to use
40 agreement, or by any other means, whereby a purchaser, in

1 exchange for consideration, receives ownership rights in or the
2 right to use accommodations for a period of time less than a full
3 year during any given year, on a recurring basis for more than one
4 year, but not necessarily for consecutive years. A time-share plan
5 may be either of the following:

6 (1) A “single site time-share plan,” which is the right to use
7 accommodations at a single time-share property.

8 (2) A “multisite time-share plan,” which includes either of the
9 following:

10 (A) A “specific time-share interest,” which is the right to use
11 accommodations at a specific time-share property, together with
12 use rights in accommodations at one or more other component
13 sites created by or acquired through the time-share plan’s
14 reservation system.

15 (B) A “nonspecific time-share interest,” which is the right to
16 use accommodations at more than one component site created by
17 or acquired through the time-share plan’s reservation system, but
18 including no specific right to use any particular accommodations.

19 (aa) “Time-share property” means one or more accommodations
20 subject to the same time-share instrument, together with any other
21 property or rights to property appurtenant to those
22 accommodations.

23 *SEC. 66. Section 11225 of the Business and Professions Code*
24 *is amended to read:*

25 11225. A person shall not be required to register a time-share
26 plan with the commissioner pursuant to this chapter if any of the
27 following applies:

28 (a) The person is an owner of a time-share interest who has
29 acquired the time-share interest for the person’s own use and
30 occupancy and who later offers it for resale.

31 (b) The person is a managing entity or an association that is not
32 otherwise a developer of a time-share plan in its own right, solely
33 while acting as an association or under a contract with an
34 association to offer or sell a time-share interest transferred to the
35 association through foreclosure, deed in lieu of foreclosure, or
36 gratuitous transfer, if these acts are performed in the regular course
37 of, or as an incident to, the management of the association for its
38 own account in the time-share plan. Notwithstanding the exemption
39 from registration, the association or managing entity shall provide
40 each purchaser of a time-share interest covered by this subdivision

1 a copy of the time-share instruments, a copy of the then-current
2 budget, a written statement of the then-current assessment amounts,
3 and shall provide the purchaser the opportunity to rescind the
4 purchase within seven days after receipt of these documents.
5 Immediately prior to the space reserved in the contract for the
6 signature of the purchaser, the association or managing entity shall
7 disclose, in conspicuous type, substantially the following notice
8 of cancellation:
9

10 YOU MAY CANCEL THIS CONTRACT WITHOUT ANY
11 PENALTY OR OBLIGATION WITHIN SEVEN CALENDAR
12 DAYS OF RECEIPT OF THE PUBLIC REPORT OR AFTER
13 THE DATE YOU SIGN THIS CONTRACT, WHICHEVER
14 DATE IS LATER. IF YOU DECIDE TO CANCEL THIS
15 CONTRACT, YOU MUST NOTIFY THE ASSOCIATION (OR
16 MANAGING ENTITY) IN WRITING OF YOUR INTENT TO
17 CANCEL. YOUR NOTICE OF CANCELLATION SHALL BE
18 EFFECTIVE UPON THE DATE SENT AND SHALL BE SENT
19 TO (NAME OF ASSOCIATION OR MANAGING ENTITY) AT
20 (ADDRESS OF ASSOCIATION OR MANAGING ENTITY).
21 YOUR NOTICE OF CANCELLATION MAY ALSO BE SENT
22 BY FACSIMILE TO (FACSIMILE NUMBER OF THE
23 ASSOCIATION OR MANAGING ENTITY) OR BY
24 HAND-DELIVERY. ANY ATTEMPT TO OBTAIN A WAIVER
25 OF YOUR CANCELLATION RIGHT IS VOID AND OF NO
26 EFFECT.
27

28 (c) The person is conveyed, assigned, or transferred more than
29 seven time-share interests from a developer in a single voluntary
30 or involuntary transaction and subsequently conveys, assigns, or
31 transfers all of the time-share interests received from the developer
32 to a single purchaser in a single transaction.

33 (d) (1) The developer is offering or disposing of a time-share
34 interest to a purchaser who has previously acquired a time-share
35 interest from the same developer if the developer has a time-share
36 plan registered under this chapter, which was originally approved
37 by the commissioner within the preceding seven years, and the
38 developer complies in all respects with the provisions of Section
39 11245, and, further, provides the purchaser with (A) a cancellation
40 period of at least seven days, (B) all the time-share disclosure

1 documents that are required to be provided to purchasers as if the
2 sale occurred in the state or jurisdiction where the time-share
3 property is located, and (C) the following disclaimer in conspicuous
4 type:

5
6 WARNING: THE CALIFORNIA DEPARTMENT OF ~~REAL~~
7 ~~ESTATE~~ *FINANCIAL SERVICES* HAS NOT EXAMINED THIS
8 OFFERING, INCLUDING, BUT NOT LIMITED TO, THE
9 CONDITION OF TITLE, THE STATUS OF BLANKET LIENS
10 ON THE PROJECT (IF ANY), ARRANGEMENTS TO ASSURE
11 PROJECT COMPLETION, ESCROW PRACTICES, CONTROL
12 OVER PROJECT MANAGEMENT, RACIALLY
13 DISCRIMINATORY PRACTICES (IF ANY), TERMS,
14 CONDITIONS, AND PRICE OF THE OFFER, CONTROL OVER
15 ANNUAL ASSESSMENTS (IF ANY), OR THE AVAILABILITY
16 OF WATER, SERVICES, UTILITIES, OR IMPROVEMENTS.
17 IT MAY BE ADVISABLE FOR YOU TO CONSULT AN
18 ATTORNEY OR OTHER KNOWLEDGEABLE
19 PROFESSIONAL WHO IS FAMILIAR WITH REAL ESTATE
20 AND DEVELOPMENT LAW IN THE STATE WHERE THIS
21 TIME-SHARE PROPERTY IS SITUATED.

22
23 (2) By making such an offering or disposition, the person is
24 deemed to consent to the jurisdiction of the commissioner in the
25 event of a dispute with the purchaser in connection with the
26 offering or disposition.

27 (e) It is a single site time-share plan located outside of the
28 boundaries of the United States or component site of a specific
29 time-share interest multisite time-share plan located wholly outside
30 of the boundaries of the United States, or a nonspecific time-share
31 interest multisite time-share plan in which all component sites are
32 located wholly outside of the boundaries of the United States.
33 However, it is unlawful and a violation of this chapter for a person,
34 in this state, to sell or lease or offer for sale or lease a time-share
35 interest in such a time-share plan, located outside the United States,
36 unless the printed material, literature, advertising, or invitation in
37 this state relating to that sale, lease, or offer clearly and
38 conspicuously contains the following disclaimer in capital letters
39 of at least 10-point type:

1 WARNING: THE CALIFORNIA DEPARTMENT OF ~~REAL~~
2 ESTATE *FINANCIAL SERVICES* HAS NOT EXAMINED
3 THIS OFFERING, INCLUDING, BUT NOT LIMITED TO,
4 THE CONDITION OF TITLE, THE STATUS OF BLANKET
5 LIENS ON THE PROJECT (IF ANY), ARRANGEMENTS
6 TO ASSURE PROJECT COMPLETION, ESCROW
7 PRACTICES, CONTROL OVER PROJECT
8 MANAGEMENT, RACIALLY DISCRIMINATORY
9 PRACTICES (IF ANY), TERMS, CONDITIONS, AND
10 PRICE OF THE OFFER, CONTROL OVER ANNUAL
11 ASSESSMENTS (IF ANY), OR THE AVAILABILITY OF
12 WATER, SERVICES, UTILITIES, OR IMPROVEMENTS.
13 IT MAY BE ADVISABLE FOR YOU TO CONSULT AN
14 ATTORNEY OR OTHER KNOWLEDGEABLE
15 PROFESSIONAL WHO IS FAMILIAR WITH REAL
16 ESTATE AND DEVELOPMENT LAW IN THE COUNTRY
17 WHERE THIS TIME-SHARE PROPERTY IS SITUATED.

18
19 (1) If an offer of time-share interest in a time-share plan
20 described in subdivision (e) is not initially made in writing, the
21 foregoing disclaimer shall be received by the offeree in writing
22 prior to a visit to a location, sales presentation, or contact with a
23 person representing the offeror, when the visit or contact was
24 scheduled or arranged by the offeror or its representative. The
25 deposit of the disclaimer in the United States mail, addressed to
26 the offeree and with first-class postage prepaid, at least five days
27 prior to the scheduled or arranged visit or contact, shall be deemed
28 to constitute delivery for purposes of this section.

29 (2) If any California resident is presented with an agreement or
30 purchase contract to lease or purchase a time-share interest as
31 described in subdivision (e), where an offer to lease or purchase
32 that time-share interest was made to that resident in California, a
33 copy of the disclaimer set forth in subdivision (e) shall be inserted
34 in at least 10-point type at the top of the first page of that agreement
35 or purchase contract and shall be initialed by that California
36 resident.

37 (3) Nothing contained in this subdivision shall be deemed to
38 exempt from registration in this state a nonspecific time-share
39 interest multisite time-share plan in which any component site in
40 the time-share plan is located in the United States.

1 *SEC. 67. Section 11232 of the Business and Professions Code*
2 *is amended to read:*

3 11232. (a) The commissioner may by regulation prescribe
4 filing fees in connection with applications to the Department of
5 ~~Real Estate~~ *Financial Services* for a public report pursuant to the
6 provisions of this chapter that are lower than the maximum fees
7 specified in subdivision (b) if the commissioner determines that
8 the lower fees are sufficient to offset the costs and expenses
9 incurred in the administration of this chapter. The commissioner
10 shall hold at least one hearing each calendar year to determine if
11 lower fees than those specified in subdivision (b) should be
12 prescribed.

13 (b) The filing fees for an application for a public report to be
14 issued under authority of this chapter shall not exceed the following
15 for each time-share plan, location, or phase of the time-share plan
16 in which interests are to be offered for sale or lease:

17 (1) One thousand seven hundred dollars (\$1,700) plus ten dollars
18 (\$10) for each time-share interest to be offered for an original
19 public report application.

20 (2) Six hundred dollars (\$600) plus ten dollars (\$10) for each
21 time-share plan interest to be offered that was not permitted to be
22 offered under the public report to be renewed for a renewal public
23 report or permit application.

24 (3) Five hundred dollars (\$500) plus ten dollars (\$10) for each
25 time-share interest to be offered under the amended public report
26 for which a fee has not previously been paid for an amended public
27 report application.

28 (4) Five hundred dollars (\$500) for a conditional public report
29 application.

30 (c) Fees collected by the commissioner under authority of this
31 chapter shall be deposited into the Real Estate Fund pursuant to
32 Chapter 6 (commencing with Section 10450) of Part 1. Fees
33 received by the commissioner pursuant to this article shall be
34 deemed earned upon receipt. No part of any fee is refundable unless
35 the commissioner determines that it was paid as a result of mistake
36 or inadvertency. This section shall remain in effect unless it is
37 superseded pursuant to Section 10266 or subdivision (a) of Section
38 10266.5, whichever is applicable.

39 *SEC. 68. Section 11243 of the Business and Professions Code*
40 *is amended to read:*

1 11243. The developer shall comply with the following escrow
2 requirements:

3 (a) A developer of a time-share plan shall deposit into an escrow
4 account in an acceptable escrow depository 100 percent of all funds
5 that are received during the purchaser's rescission period. An
6 acceptable escrow depository includes, when qualified to do
7 business in this state, escrow agents licensed by the Commissioner
8 of ~~Corporations~~ *Financial Services*, banks, trust companies, savings
9 and loan associations, title insurers, and underwritten title
10 companies. The deposit of these funds shall be evidenced by an
11 executed escrow agreement between the escrow agent and the
12 developer, that shall include provisions that state the following:

13 (1) Funds may be disbursed to the developer by the escrow
14 agent from the escrow account only after expiration of the
15 purchaser's rescission period and in accordance with the purchase
16 contract, subject to subdivision (b).

17 (2) If a prospective purchaser properly cancels the purchase
18 contract pursuant to its terms, the funds shall be paid to the
19 prospective purchaser or paid to the developer if the prospective
20 purchaser's funds have been previously refunded by the developer.

21 (b) If a developer contracts to sell a time-share interest and the
22 construction of any property in which the time-share interest is
23 located has not been completed, the developer, upon expiration of
24 the rescission period, shall continue to maintain in an escrow
25 account all funds received by or on behalf of the developer from
26 the prospective purchaser under his or her purchase contract. The
27 commissioner shall establish, by regulation, the types of
28 documentation which shall be required for evidence of completion,
29 including, but not limited to, a certificate of occupancy, a certificate
30 of substantial completion, or an inspection by the State Fire
31 Marshal designee or an equivalent public safety inspection agency
32 in the applicable jurisdiction. Unless the developer submits
33 financial assurances, in accordance with subdivision (c), funds
34 shall not be released from escrow until a certificate of occupancy,
35 or its equivalent, has been obtained and the rescission period has
36 passed, and the time-share interest can be transferred free and clear
37 of blanket encumbrances, including mechanics' liens. Funds to be
38 released from escrow shall be released as follows:

39 (1) If a prospective purchaser properly cancels the purchase
40 contract pursuant to its terms, the funds shall be paid to the

1 prospective purchaser or paid to the developer if the prospective
2 purchaser's funds have been previously refunded by the developer.

3 (2) If a prospective purchaser defaults in the performance of
4 the prospective purchaser's obligations under the purchase contract,
5 the funds shall be paid to the developer.

6 (3) If the funds of a prospective purchaser have not been
7 previously disbursed in accordance with the provisions of this
8 subdivision, they may be disbursed to the developer by the escrow
9 agent upon the issuance of acceptable evidence of completion of
10 construction.

11 (c) In lieu of the provisions in subdivisions (a) and (b), the
12 commissioner may accept from the developer a surety bond, escrow
13 bond, irrevocable letter of credit, or other financial assurance or
14 arrangement acceptable to the commissioner. Any acceptable
15 financial assurance shall be in an amount equal to or in excess of
16 the lesser of (1) the funds that would otherwise be placed in escrow,
17 or (2) in an amount equal to the cost to complete the incomplete
18 property in which the time-share interest is located. However, in
19 no event shall the amount be less than the amount of funds that
20 would otherwise be placed in escrow pursuant to paragraph (1) of
21 subdivision (a).

22 (d) The developer shall provide escrow account information to
23 the commissioner and shall execute in writing an authorization
24 consenting to an audit or examination of the account by the
25 commissioner on forms provided by the commissioner. The
26 developer shall comply with the reconciliation and records
27 requirements established by regulation by the commissioner. The
28 developer shall make documents related to the escrow account or
29 escrow obligation available to the commissioner upon the
30 department's request. The escrow agent shall maintain any disputed
31 funds in the escrow account until either of the following occurs:

32 (1) Receipt of written direction agreed to by signature of all
33 parties.

34 (2) Deposit of the funds with a court of competent jurisdiction
35 in which a civil action regarding the funds has been filed.

36 *SEC. 69. Section 11301 of the Business and Professions Code*
37 *is repealed.*

38 ~~11301. There is hereby created within the Business,~~
39 ~~Transportation and Housing Agency an Office of Real Estate~~
40 ~~Appraisers to administer and enforce this part.~~

1 *SEC. 70. Section 11302 of the Business and Professions Code*
2 *is amended to read:*

3 11302. For the purpose of applying this part, the following
4 terms, unless otherwise expressly indicated, shall mean and have
5 the following definitions:

6 (a) “Agency” means the Business, Transportation and Housing
7 Agency.

8 (b) “Appraisal” means a written statement independently and
9 impartially prepared by a qualified appraiser setting forth an
10 opinion in a federally related transaction as to the market value of
11 an adequately described property as of a specific date, supported
12 by the presentation and analysis of relevant market information.

13 The term “appraisal” does not include an opinion given by a real
14 estate licensee or engineer or land surveyor in the ordinary course
15 of his or her business in connection with a function for which a
16 license is required under Chapter 7 (commencing with Section
17 6700) or Chapter 15 (commencing with Section 8700) of Division
18 3, or Chapter 3 (commencing with Section 10130) or Chapter 7
19 (commencing with Section 10500) and the opinion shall not be
20 referred to as an appraisal. This part does not apply to a probate
21 referee acting pursuant to Sections 400 to 408, inclusive, of the
22 Probate Code unless the appraised transaction is federally related.

23 (c) “Appraisal Foundation” means the Appraisal Foundation
24 that was incorporated as an Illinois not-for-profit corporation on
25 November 30, 1987.

26 (d) “Appraisal Subcommittee” means the Appraisal
27 Subcommittee of the Federal Financial Institutions Examination
28 Council.

29 ~~(e) “Director” means the Director of the Office of Real Estate~~
30 ~~Appraisers.~~

31 (e) “Commissioner” means the Commissioner of Financial
32 Services. All references to “commissioner” shall be deemed to
33 refer to the Commissioner of Financial Services.

34 (f) “Department” means the Department of Financial Services.
35 All references to the “department” shall be deemed to refer to the
36 Department of Financial Services.

37 ~~(f)~~

38 (g) “Federal financial institutions regulatory agency” means the
39 Federal Reserve Board, Federal Deposit Insurance Corporation,
40 Office of the Comptroller of the Currency, Office of Thrift

1 Supervision, Federal Home Loan Bank System, National Credit
2 Union Administration, the Resolution Trust Corporation, and any
3 other agency determined by the ~~director~~ *commissioner* to have
4 jurisdiction over transactions subject to this part.

5 ~~(g)~~

6 (h) “Federally related real estate appraisal activity” means the
7 act or process of making or performing an appraisal on real estate
8 or real property in a federally related transaction and preparing an
9 appraisal as a result of that activity.

10 ~~(h)~~

11 (i) “Federally related transaction” means any real estate-related
12 financial transaction which a federal financial institutions
13 regulatory agency engages in, contracts for or regulates and which
14 requires the services of a state licensed real estate appraiser
15 regulated by this part. This term also includes any transaction
16 identified as such by a federal financial institutions regulatory
17 agency.

18 ~~(i)~~

19 (j) “License” means any license, certificate, permit, registration,
20 or other means issued by the ~~office~~ *department* authorizing the
21 person to whom it is issued to act pursuant to this part within this
22 state.

23 ~~(j)~~

24 (k) “Licensure” means the procedures and requirements a person
25 shall comply with in order to qualify for issuance of a license and
26 includes the issuance of the license.

27 ~~(k) “Office” means the Office of Real Estate Appraisers.~~

28 ~~(l) “Secretary” means the Secretary of the Business,~~
29 ~~Transportation and Housing Agency.~~

30 ~~(m)~~

31 (l) “State licensed real estate appraiser” is a person who is issued
32 and holds a current valid license under this part.

33 ~~(n)~~

34 (m) “Uniform Standards of Professional Appraisal Practice” are
35 the standards of professional appraisal practice established by the
36 Appraisal Foundation.

37 ~~(o)~~

38 (n) “Course provider” means a person or entity that provides
39 educational courses related to professional appraisal practice.

1 *SEC. 71. Section 11310 of the Business and Professions Code*
2 *is repealed.*

3 ~~11310. The Governor shall appoint, subject to confirmation~~
4 ~~by the Senate, the Director of the Office of Real Estate Appraisers~~
5 ~~who shall, in consultation with the Governor and secretary,~~
6 ~~administer the licensing and certification program for real estate~~
7 ~~appraisers. In making the appointment, consideration shall be given~~
8 ~~to the qualifications of an individual that demonstrate knowledge~~
9 ~~of the real estate appraisal profession.~~

10 ~~(a) The director shall serve at the pleasure of the Governor. The~~
11 ~~salary for the director shall be fixed and determined by the secretary~~
12 ~~with approval of the Department of Personnel Administration.~~

13 ~~(b) The director shall not be actively engaged in the appraisal~~
14 ~~business or any other affected industry for the term of appointment,~~
15 ~~and thereafter the director shall be subject to Section 87406 of the~~
16 ~~Government Code.~~

17 ~~(c) The director, in consultation with the secretary and in~~
18 ~~accordance with the State Civil Service Act, may appoint and fix~~
19 ~~the compensation of legal, clerical, technical, investigation, and~~
20 ~~auditing personnel as may be necessary to carry out this part. All~~
21 ~~personnel shall perform their respective duties under the~~
22 ~~supervision and direction of the director.~~

23 ~~(d) The director may appoint not more than four deputy directors~~
24 ~~as he or she deems appropriate. The deputy directors shall perform~~
25 ~~their respective duties under the supervision and direction of the~~
26 ~~director.~~

27 ~~(e) Every power granted to or duty imposed upon the director~~
28 ~~under this part may be exercised or performed in the name of the~~
29 ~~director by the deputy directors, subject to conditions and~~
30 ~~limitations as the director may prescribe.~~

31 *SEC. 72. Section 11313 of the Business and Professions Code*
32 *is repealed.*

33 ~~11313. The office is under the supervision and control of the~~
34 ~~secretary. The duty of enforcing and administering this part is~~
35 ~~vested in the director and he or she is responsible to the secretary~~
36 ~~therefor. The director shall adopt and enforce rules and regulations~~
37 ~~as are determined reasonably necessary to carry out the purposes~~
38 ~~of this part. Those rules and regulations shall be adopted pursuant~~
39 ~~to Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
40 ~~Division 3 of Title 2 of the Government Code.~~

1 *SEC. 73. Section 11314 of the Business and Professions Code*
2 *is amended to read:*

3 11314. The ~~office~~ *department* is required to include in its
4 regulations requirements for licensure and discipline of real estate
5 appraisers that ensure protection of the public interest and comply
6 in all respects with Title XI of the Financial Institutions Reform,
7 Recovery, and Enforcement Act of 1989, Public Law 101-73 and
8 any subsequent amendments thereto. Requirements for each level
9 of licensure shall, at a minimum, meet the criteria established by
10 the Appraiser Qualification Board of the Appraisal Foundation.

11 *SEC. 74. Section 11315 of the Business and Professions Code*
12 *is amended to read:*

13 11315. (a) The ~~director~~ *commissioner* may issue to a licensee,
14 applicant for licensure, person who acts in a capacity that requires
15 a license under this part, course provider, applicant for course
16 provider accreditation, or a person who, or entity that, acts in a
17 capacity that requires course provider accreditation a citation that
18 may contain an order to pay an administrative fine assessed by the
19 ~~office~~ *department* if the person or entity is in violation of this part
20 or any regulations adopted to carry out its purposes.

21 (b) A citation shall be written and describe with particularity
22 the nature of the violation, including a specific reference to the
23 provision of law determined to have been violated.

24 (c) If appropriate, the citation may contain an order of abatement
25 fixing a reasonable time for abatement of the violation.

26 (d) (1) If appropriate, the citation may contain an order to enroll
27 in and successfully complete additional basic or continuing
28 education courses.

29 (2) When a citation imposes an education course or courses, the
30 completion of the course or courses by the licensee shall be subject
31 to the following conditions:

32 (A) The citation imposing the education requirement may
33 specify the specific course content, the number of hours to be
34 completed, the date by which the course is to be completed, and
35 the method by which satisfaction of the order is to be reported to
36 the ~~office~~ *department*.

37 (B) An education course imposed by citation may not be credited
38 towards the licensee's continuing education requirements pursuant
39 to Section 11360.

1 (C) Only courses accredited by the ~~office~~ *department* shall be
2 accepted for purposes of fulfilling education imposed by citation.

3 (D) Any failure to satisfactorily complete or timely report an
4 education course to the ~~office~~ *department* by the date specified in
5 the citation shall result in the automatic suspension of the licensee's
6 real estate appraiser license as of that date.

7 (E) Reinstatement of a license suspended pursuant to
8 subparagraph (D) shall be made only if all of the following events
9 occur:

10 (i) Satisfactory verification of the completion of the education
11 course or courses imposed by the citation.

12 (ii) Completion and filing of a reinstatement application.

13 (iii) Payment of all applicable fees, fines, or penalties.

14 (e) In no event shall an administrative fine assessed by the ~~office~~
15 *department* by citation or order exceed ten thousand dollars
16 (\$10,000) per violation. In assessing a fine, the ~~office~~ *department*
17 shall give due consideration to the appropriateness of the amount
18 of the fine with respect to factors such as the gravity of the
19 violation, the good faith of the person who committed the violation,
20 and the history of previous violations.

21 (f) A citation or fine assessment issued pursuant to a citation
22 shall inform the person cited that, if he or she desires a hearing to
23 contest the finding of a violation, he or she must request a hearing
24 by written notice to the ~~office~~ *department* within 30 days of the
25 date of issuance of the citation or assessment. Hearings shall be
26 held pursuant to Chapter 5 (commencing with Section 11500) of
27 Part 1 of Division 3 of Title 2 of the Government Code. The
28 citation or fine assessment shall also inform the person cited that
29 failure to respond to the citation or fine assessment shall result in
30 any order or administrative fine imposed becoming final, and that
31 any order or administrative fine shall constitute an enforceable
32 civil judgment in addition to any other penalty or remedy available
33 pursuant to law.

34 (g) (1) If a licensee, applicant for licensure, person who acts
35 in a capacity that requires a license under this part, course provider,
36 applicant for course provider accreditation, or a person who, or
37 entity that, acts in a capacity that requires course provider
38 accreditation fails to pay a fine, penalty, or required installment
39 payment on the fine or penalty by the date when it is due, the
40 ~~director~~ *commissioner* shall charge him or her interest and a penalty

1 of 10 percent of the fine or installment payment amount. Interest
2 shall be charged at the pooled money investment rate.

3 (2) Failure of a licensee, applicant for licensure, person who
4 acts in a capacity that requires a license under this part, course
5 provider, applicant for course provider accreditation, or a person
6 who, or entity that, acts in a capacity that requires course provider
7 accreditation to pay a fine or required installment payment on the
8 fine within 30 days of the date ordered in the citation, unless the
9 citation is being appealed, shall be cause for additional disciplinary
10 action by the ~~office~~ *department*.

11 (3) If a citation is not contested and a fine or fine payment is
12 not paid within 30 days of the date ordered in the citation or other
13 order of the ~~director~~ *commissioner*, the full amount of the unpaid
14 balance of the assessed fine shall be added to any fee for renewal
15 of a license. A license shall not be renewed prior to payment of
16 the renewal fee and fine.

17 (4) The ~~director~~ *commissioner* may order the full amount of any
18 fine to be immediately due and payable if any payment due on a
19 fine is not received by the ~~office~~ *department* within 30 days of its
20 due date.

21 (5) Any fine, or interest thereon, not paid within 30 days of a
22 final citation or order shall constitute a valid and enforceable civil
23 judgment.

24 (6) A certified copy of the final order, or the citation with
25 certification by the ~~office~~ *department* that no request for hearing
26 was received within 30 days of the date of issuance of the citation,
27 shall be conclusive proof of the civil judgment, its terms, and its
28 validity.

29 (h) A citation may be issued without the assessment of an
30 administrative fine.

31 (i) Any administrative fine or penalty imposed pursuant to this
32 section shall be in addition to any other criminal or civil penalty
33 provided for by law.

34 (j) Administrative fines collected pursuant to this section shall
35 be deposited in the Real Estate Appraisers Regulation Fund.

36 *SEC. 75. Section 11315.5 of the Business and Professions Code*
37 *is amended to read:*

38 11315.5. Notwithstanding any other provision of law, the ~~office~~
39 *department* may, at any time the ~~director~~ *commissioner* deems it
40 to be in the public interest, enter into a settlement of any

1 administrative allegation of violation of this part, or of regulations
2 promulgated pursuant thereto, upon any terms and conditions as
3 the ~~director~~ *commissioner* deems appropriate. Those settlements
4 may include, but are not limited to, a plan for abatement of the
5 violation or rehabilitation or requalification of the applicant,
6 licensed appraiser, course provider, or person acting in a capacity
7 requiring a license or course provider accreditation within a
8 specified time.

9 *SEC. 76. Section 11316 of the Business and Professions Code*
10 *is amended to read:*

11 11316. (a) The ~~director~~ *commissioner* may assess a fine against
12 a licensee, applicant for licensure, person who acts in a capacity
13 that requires a license under this part, course provider, applicant
14 for course provider accreditation, or a person who, or entity that,
15 acts in a capacity that requires course provider accreditation for
16 violation of this part or any regulations adopted to carry out its
17 purposes.

18 (b) (1) Failure of a licensee, applicant for licensure, person who
19 acts in a capacity that requires a license under this part, course
20 provider, applicant for course provider accreditation, or a person
21 who, or entity that, acts in a capacity that requires course provider
22 accreditation to pay a fine or make a fine payment within 30 days
23 of the date of assessment shall result in disciplinary action by the
24 ~~office~~ *department*. If a licensee, applicant for licensure, person
25 who acts in a capacity that requires a license under this part, course
26 provider, applicant for course provider accreditation, or a person
27 who, or entity that, acts in a capacity that requires course provider
28 accreditation fails to pay a fine within 30 days, the ~~director~~
29 *commissioner* shall charge him or her interest and a penalty of 10
30 percent of the fine or payment amount. Interest shall be charged
31 at the pooled money investment rate.

32 (2) If a fine is not paid, the full amount of the assessed fine shall
33 be added to any fee for renewal of a license. A license shall not
34 be renewed prior to payment of the renewal fee and fine.

35 (3) The ~~director~~ *commissioner* may order the full amount of any
36 fine to be immediately due and payable if any payment on the fine,
37 or portion thereof, is not received within 30 days of its due date.

38 (4) Any fine, or interest thereon, not paid within 30 days of a
39 final order shall constitute a valid and enforceable civil judgment.

1 (5) A certified copy of the final order shall be conclusive proof
2 of the validity of the order of payment and the terms of payment.

3 (c) Any administrative fine or penalty imposed pursuant to this
4 section shall be in addition to any other criminal or civil penalty
5 provided for by law.

6 (d) Administrative fines collected pursuant to this section shall
7 be deposited in the Real Estate Appraisers Regulation Fund.

8 *SEC. 77. Section 11317 of the Business and Professions Code*
9 *is amended to read:*

10 11317. The ~~office~~ *department* shall publish a summary of public
11 disciplinary actions taken by the ~~office~~ *department*, including
12 resignations while under investigation and the violations upon
13 which these actions are based, which shall meet, at a minimum,
14 the requirements of the appraisal subcommittee. The ~~office~~
15 *department* shall not publish identifying information with respect
16 to private reprovals or letters of warning, which shall remain
17 confidential.

18 *SEC. 78. Section 11318 of the Business and Professions Code*
19 *is amended to read:*

20 11318. (a) A licensee, applicant for licensure, course provider,
21 or applicant for course provider accreditation shall report to the
22 ~~office~~ *department*, in writing, the occurrence of any of the
23 following events within 30 days of the date he or she has
24 knowledge of any of these events:

25 (1) The conviction of the licensee, applicant for licensure, course
26 provider, or applicant for course provider accreditation of any of
27 the following:

28 (A) A felony.

29 (B) Any crime related to the qualifications, functions, or duties
30 of a licensee, or to acts or activities committed in the course of the
31 licensee's or course provider's practice.

32 As used in this section, a conviction includes an initial plea,
33 verdict, or finding of guilty, plea of no contest, or pronouncement
34 of sentence by a trial court even though that conviction may not
35 be final, the sentence may not be imposed, or all appeals may not
36 be exhausted.

37 (2) The cancellation, revocation, or suspension of a license,
38 other authority to practice, or refusal to renew a license or other
39 authority to practice as an occupational or professional licensee
40 or course provider, by any other regulatory entity.

1 (3) The cancellation, revocation, or suspension of the right to
2 practice before any governmental body or agency.

3 (b) The report required by subdivision (a) shall be signed by
4 the licensee, applicant for licensure, course provider, or applicant
5 for course provider accreditation and clearly set forth the facts that
6 constitute the reportable event. The report shall include the title
7 of the matter, court or agency name, docket number, and dates of
8 occurrence of the reportable event.

9 (c) The licensee, applicant for licensure, course provider, or
10 applicant for course provider accreditation shall also promptly
11 obtain and submit a certified copy of the police or administrative
12 agency's investigative report and certified copies of the court or
13 administrative agency's docket, complaint or accusation, and
14 judgment or other order.

15 (d) A licensee, applicant for licensure, course provider, or
16 applicant for course provider accreditation shall promptly respond
17 to oral or written inquiries from the ~~office~~ department concerning
18 the reportable events.

19 *SEC. 79. Section 11325 of the Business and Professions Code*
20 *is amended to read:*

21 11325. (a) The ~~director~~ commissioner shall adopt regulations
22 which determine the parameters of appraisal work which may be
23 performed by licensed appraisers.

24 (b) Regulations adopted by the ~~director~~ commissioner pursuant
25 to this section shall, at a minimum, meet the standards established
26 by federal financial institution regulatory agencies as required by
27 Section 1112 of Title XI of the Financial Institutions Reform,
28 Recovery, and Enforcement Act of 1989, Public Law 101-73.

29 *SEC. 80. Section 11326 of the Business and Professions Code*
30 *is amended to read:*

31 11326. (a) The county assessor shall, upon request, disclose
32 information, furnish abstracts, copies of maps, construction permits,
33 notices of completion, sales confirmation, and permit access to all
34 records in his or her office or branch offices, to the ~~Office of Real~~
35 ~~Estate Appraisers~~ department when it is conducting an investigation
36 related to professional conduct of appraisers.

37 (b) Whenever the assessor discloses information, furnishes
38 abstracts, and all of the above and permits access to records to the
39 ~~Office of Real Estate Appraisers~~ department, the ~~office~~ department

1 shall reimburse the assessor for any reasonable cost incurred as a
2 result thereof.

3 *SEC. 81. Section 11327 of the Business and Professions Code*
4 *is amended to read:*

5 11327. The ~~director~~ *commissioner* shall adopt regulations
6 governing the process and procedure of applying for a trainee
7 license, which shall meet, at a minimum, the requirements of the
8 Appraisal Foundation.

9 *SEC. 82. Section 11328 of the Business and Professions Code*
10 *is amended to read:*

11 11328. To substantiate documentation of appraisal experience,
12 or to facilitate the investigation of illegal or unethical activities by
13 a licensee, applicant, or other person acting in a capacity that
14 requires a license, that licensee, applicant, or person shall, upon
15 the request of the ~~director~~ *commissioner*, submit copies of
16 appraisals, or any work product which is addressed by the Uniform
17 Standards of Professional Appraisal Practice, and all supporting
18 documentation and data to the ~~office~~ *department*. This material
19 shall be confidential in accordance with the confidentiality
20 provisions of the Uniform Standards of Professional Appraisal
21 Practice.

22 *SEC. 83. Section 11340 of the Business and Professions Code*
23 *is amended to read:*

24 11340. The ~~director~~ *commissioner* shall adopt regulations
25 governing the process and the procedure of applying for a license
26 which shall include, but not be limited to, necessary experience
27 or education, equivalency, and minimum requirements of the
28 Appraisal Foundation, if any.

29 (a) For purposes of the educational background requirements
30 established under this section, the ~~director~~ *commissioner* shall
31 grant credits for any courses taken on real estate appraisal ethics
32 or practices pursuant to Section 10153.2, or which are deemed by
33 the ~~director~~ *commissioner* to meet standards established pursuant
34 to this part and federal law.

35 (b) For the purpose of implementing and applying this section,
36 the ~~director~~ *commissioner* shall prescribe by regulation “equivalent
37 courses” and “equivalent experience.” The experience of employees
38 of an assessor’s office or of the State Board of Equalization in
39 setting forth opinions of value of real property for tax purposes
40 shall be deemed equivalent to experience in federally related real

1 estate appraisal activity. Notwithstanding any other law, a holder
2 of a valid real estate broker license shall be deemed to have
3 completed appraisal license application experience requirements
4 upon proof that he or she has accumulated 1,000 hours of
5 experience in the valuation of real property.

6 (c) The ~~director~~ *commissioner* shall adopt regulations for
7 licensure which shall meet, at a minimum, the requirements and
8 standards established by the Appraisal Foundation, the Resolution
9 Trust Corporation, and the federal financial institutions regulatory
10 agencies acting pursuant to Section 1112 of the Financial
11 Institutions Reform, Recovery, and Enforcement Act of 1989,
12 Public Law 101-73 (FIRREA). The ~~director~~ *commissioner* shall,
13 by regulation, require the application for a real estate appraiser
14 license to include the applicant's social security number.

15 (d) In evaluating the experience of any applicant for a license,
16 regardless of the number of hours required of that applicant, the
17 ~~director~~ *commissioner* shall apply the same standards to the
18 experience of all applicants.

19 (e) No license shall be issued to an applicant who is less than
20 18 years of age.

21 *SEC. 84. Section 11341 of the Business and Professions Code*
22 *is amended to read:*

23 11341. A license issued with an effective date of January 1,
24 2000, or later shall be valid for two years unless otherwise extended
25 or limited by the ~~director~~ *commissioner*.

26 *SEC. 85. Section 11344 of the Business and Professions Code*
27 *is amended to read:*

28 11344. (a) Notwithstanding Section 11341, a temporary license
29 may be issued pending the outcome of the fingerprint and
30 background check or as otherwise prescribed by the ~~director~~
31 *commissioner*. A temporary license is valid for up to 150 days.
32 Unless otherwise prohibited pursuant to Section 11350.6 of the
33 Welfare and Institutions Code, a temporary license may be renewed
34 once at the discretion of the ~~director~~ *commissioner*.

35 (b) The ~~director~~ *commissioner* may issue a probationary license
36 as follows:

37 (1) By term.

38 (2) By conditions to be observed in the exercise of the privileges
39 granted.

1 *SEC. 86. Section 11350 of the Business and Professions Code*
2 *is amended to read:*

3 11350. The ~~director~~ *commissioner* shall adopt regulations
4 governing the process and procedure of applying for reciprocity,
5 which shall meet, at a minimum, the requirements of the Appraisal
6 Subcommittee.

7 *SEC. 87. Section 11352 of the Business and Professions Code*
8 *is amended to read:*

9 11352. The ~~director~~ *commissioner* shall adopt regulations
10 governing the process and procedure of applying for temporary
11 practice, which shall meet, at a minimum, the requirements of the
12 Appraisal Subcommittee.

13 *SEC. 88. Section 11360 of the Business and Professions Code*
14 *is amended to read:*

15 11360. (a) The ~~director~~ *commissioner* shall adopt regulations
16 governing the process and procedures for renewal of a license
17 which shall include, but not be limited to, continuing education
18 requirements, which shall be reported on the basis of four-year
19 continuing education cycles.

20 (b) An applicant for renewal of a license shall be required to
21 demonstrate his or her continuing fitness to hold a license prior to
22 its renewal. Applicants shall also fulfill continuing education
23 requirements established pursuant to this section and may certify
24 that they have read and understand all applicable California and
25 federal laws and regulations pertaining to the licensing and
26 certification of real estate appraisers in lieu of being required to
27 take a minimum of four hours of federal and California
28 appraisal-related statutory and regulatory law every four years.

29 *SEC. 89. Section 11361 of the Business and Professions Code*
30 *is amended to read:*

31 11361. The ~~director~~ *commissioner* shall adopt regulations for
32 implementation of this chapter to ensure that persons engaged in
33 appraisal activity have current knowledge of real estate appraisal
34 theories, practices, and techniques which will provide a high degree
35 of service and protection to the public.

36 *SEC. 90. Section 11400 of the Business and Professions Code*
37 *is amended to read:*

38 11400. (a) Initial application fees shall be paid to the ~~office~~
39 *department* at the time of application.

1 (b) All issuance-related fees shall be paid to the ~~office~~
2 *department* at the time the issuance application is submitted to the
3 ~~office department~~.

4 (c) All fees shall be paid by cashier's check, certified check,
5 money order, or government purchase order. In addition, the ~~office~~
6 *department* may accept personal checks or credit cards for the
7 payment of fees. All fees shall be deemed earned by the ~~office~~
8 *department* upon receipt and are refundable at the discretion of
9 the ~~director~~ *commissioner*.

10 *SEC. 91. Section 11401 of the Business and Professions Code*
11 *is amended to read:*

12 11401. (a) The fee to take an examination or reexamination
13 for a license shall be set at an amount not to exceed the cost to the
14 ~~office department~~ as determined by competitive bid.

15 (b) The ~~director~~ *commissioner* may provide that the applicant
16 pay the fee directly to the examination provider.

17 *SEC. 92. Section 11406 of the Business and Professions Code*
18 *is amended to read:*

19 11406. (a) The ~~director~~ *commissioner* shall by regulation
20 establish fees for approval of basic education and continuing
21 education courses or their equivalent, or for the evaluation of
22 petitions of applicants based upon claims of equivalency pursuant
23 to Section 11340. The fees established by regulation shall be
24 sufficient to cover the costs incurred by the ~~office department~~ in
25 processing applications for course approvals and petitions for
26 equivalency.

27 (b) The ~~director~~ *commissioner* shall by regulation establish fees
28 for approval of courses of study required to be taken by applicants
29 for licenses. The fees established by regulation shall be sufficient
30 to cover the costs incurred by the ~~office department~~ in processing
31 applications for course approvals and petitions for equivalency.

32 *SEC. 93. Section 11407 of the Business and Professions Code*
33 *is amended to read:*

34 11407. The ~~director~~ *commissioner* may by regulation prescribe
35 fees lower than the maximum fees established by this chapter if
36 he or she determines that lower fees will be adequate to offset the
37 costs incurred by the ~~office department~~ and the committee in the
38 administration of this part.

39 *SEC. 94. Section 11408 of the Business and Professions Code*
40 *is amended to read:*

1 11408. (a) Application for issuance of a license must be
2 submitted to the ~~office~~ *department* within one year of the successful
3 completion of the examination.

4 (b) Every applicant or licensee shall pay federal registry fees
5 and state registry processing fees to the state as required as part
6 of issuance-related fees.

7 *SEC. 95. Section 11409 of the Business and Professions Code*
8 *is amended to read:*

9 11409. (a) Except as otherwise provided by law, any order
10 issued in resolution of a disciplinary proceeding may direct a
11 licensee, applicant for licensure, person who acts in a capacity that
12 requires a license under this part, course provider, applicant for
13 course provider accreditation, or a person who, or entity that, acts
14 in a capacity that requires course provider accreditation found to
15 have committed a violation or violations of statutes or regulations
16 relating to real estate appraiser practice to pay a sum not to exceed
17 the reasonable costs of investigation, enforcement, and prosecution
18 of the case.

19 (b) Where an order for recovery of costs is made and payment
20 is not made within 30 days of the date directed in the ~~office's~~
21 *department's* decision, the order for recovery shall constitute a
22 valid and enforceable civil judgment. This judgment shall be in
23 addition to, and not in place of, any other criminal or civil penalties
24 provided for by law.

25 (c) (1) Failure of a licensee, applicant for licensure, person who
26 acts in a capacity that requires a license under this part, course
27 provider, applicant for course provider accreditation, or a person
28 who, or entity that, acts in a capacity that requires course provider
29 accreditation to pay recovery costs or make a recovery cost
30 payment within 30 days of the date ordered, shall result in
31 disciplinary action by the ~~office~~ *department*. If the person fails to
32 pay recovery costs within 30 days, that person shall pay interest
33 and a penalty of 10 percent of the recovery costs or payment
34 amount. Interest shall be charged at the pooled money investment
35 rate.

36 (2) If recovery costs are not paid as ordered, the full amount of
37 the assessed fine shall be added to any fee for renewal of a license.
38 A license shall not be renewed prior to payment of the renewal fee
39 and recovery costs.

1 (3) The ~~director~~ *commissioner* may order the full amount of any
2 recovery costs to be immediately due and payable if any payment
3 on the recovery costs, or portion thereof, is not received within 30
4 days of its due date.

5 (4) Any recovery costs, or interest thereon, not paid within 30
6 days of a final order shall constitute a valid and enforceable civil
7 judgment.

8 (d) A certified copy of the ~~office's~~ *department's* decision shall
9 be conclusive proof of the validity of the order and its terms.

10 (e) The ~~office~~ *department* shall not renew or reinstate the license
11 of any licensee who has failed to pay all of the costs ordered under
12 this section.

13 (f) Nothing in this section shall preclude the ~~office~~ *department*
14 from including the recovery of the costs of investigation and
15 enforcement of a case in any default decision or stipulated
16 settlement.

17 *SEC. 96. Section 11412 of the Business and Professions Code*
18 *is amended to read:*

19 11412. (a) On or before January 1, 2002, the ~~director~~
20 *commissioner* shall determine the number of complaint cases
21 containing judicial findings of fraud that may be eligible for
22 recovery pursuant to future regulations that are closely analogous
23 to those which have been adopted for the Real Estate Recovery
24 Fund established in Chapter 6.5 (commencing with Section 10470)
25 of Part 1. This information shall be used by the ~~director~~
26 *commissioner* to determine whether a real estate appraiser Recovery
27 Account is necessary or whether to recommend that it should be
28 eliminated.

29 (b) On or before January 1, 2004, regulations shall be adopted
30 for administration of the Recovery Account, which shall include
31 claims, funding, and administrative procedures closely analogous
32 to those which have been adopted for the Real Estate Recovery
33 Fund established in Chapter 6.5 (commencing with Section 10470)
34 of Part 1.

35 (c) The statute of limitations for claims against the fund arising
36 between the effective date of this part and the creation of the fund
37 shall be tolled until the date the fund is created.

38 *SEC. 97. Section 11422 of the Business and Professions Code*
39 *is amended to read:*

1 11422. The ~~office~~ *department* shall, on or before February 1,
2 1994, and at least annually thereafter, transmit to the appraisal
3 subcommittee specified in subdivision (d) of Section 11302 a roster
4 of persons licensed pursuant to this part.

5 *SEC. 98. Section 11502.5 of the Business and Professions Code*
6 *is amended to read:*

7 11502.5. The course related competency examination or
8 examinations and education provided to a certified common interest
9 development manager pursuant to Section 11502 by any
10 professional association for common interest development
11 managers, or any postsecondary educational institution, shall be
12 developed and administered in a manner consistent with standards
13 and requirements set forth by the American Educational Research
14 Association's "Standards for Educational and Psychological
15 Testing," and the Equal Employment Opportunity Commission's
16 "Uniform Guidelines for Employee Selection Procedures," the
17 Unruh Civil Rights Act, the California Fair Employment and
18 Housing Act, and the Americans with Disabilities Act of 1990, or
19 the course or courses that have been approved as a continuing
20 education course or an equivalent course of study pursuant to the
21 regulations of the ~~Real Estate~~ *Commissioner of Financial Services*.

22 *SEC. 99. Section 17511.1 of the Business and Professions Code*
23 *is amended to read:*

24 17511.1. As used in this article, "telephonic seller" or "seller"
25 means a person who, on his or her own behalf or through
26 salespersons or through the use of an automatic dialing-announcing
27 device, as defined in Section 2871 of the Public Utilities Code,
28 causes a telephone solicitation or attempted telephone solicitation
29 to occur which meets the criteria specified in subdivision (a), (b),
30 (c), or (d) and who is not exempted by subdivision (e), as follows:

31 (a) A telephone solicitation or attempted telephone solicitation
32 wherein the telephonic seller initiates telephonic contact with a
33 prospective purchaser and represents or implies one or more of
34 the following:

35 (1) That a prospective purchaser who buys one or more items
36 will also receive additional or other items, whether or not of the
37 same type as purchased, without further cost. For purposes of this
38 subdivision, "further cost" does not include actual postage or
39 common carrier delivery charges, if any.

1 (2) That a prospective purchaser will receive a prize or gift, if
2 the person also encourages the prospective purchaser to do either
3 of the following:

4 (A) Purchase or rent any goods or services.

5 (B) Pay any money, including, but not limited to, a delivery or
6 handling charge.

7 (3) That a prospective purchaser is able to obtain any item or
8 service at a price which the seller states or implies is below the
9 regular price of the item or service offered. This paragraph shall
10 not apply to retailers who, within the previous 12 months, have
11 sold a majority of their goods or services through in-person sales
12 at retail stores.

13 (4) That a prospective purchaser who buys office equipment or
14 supplies will, because of some unusual event or imminent price
15 increase, be able to buy these items at prices which are below those
16 that are usually charged or will be charged for the items.

17 (5) That the seller is a person other than the person he or she is.

18 (6) That the items for sale are manufactured or supplied by a
19 person other than the actual manufacturer or supplier.

20 (7) That the seller is offering to sell the prospective purchaser
21 any gold, silver, or other metals, including coins, diamonds, rubies,
22 sapphires, or other stones, coal or other minerals, or any interest
23 in oil, gas, or mineral fields, wells, or exploration sites, or any
24 other investment opportunity of any type whatsoever.

25 (8) That the seller is offering to make a loan, or to arrange or
26 assist in arranging a loan or to assist in providing information
27 which may lead to the obtaining of a loan, unless no payment of
28 any kind is made until the loan proceeds are disbursed to the
29 borrower.

30 (9) That a prospective purchaser will receive a credit card, as
31 defined in subdivision (a) of Section 1747.02 of the Civil Code,
32 if the purchaser pays an up front or preapplication fee for the credit
33 card to the telephonic seller.

34 (b) A solicitation or attempted solicitation which is made by
35 telephone in response to inquiries generated by unrequested
36 notifications sent by the seller to persons who have not previously
37 purchased goods or services from the seller or who have not
38 previously requested credit from the seller, to a prospective
39 purchaser wherein the seller represents or implies to the recipient
40 of the notification that any of the following applies to the recipient:

1 (1) That the recipient has in any manner been specially selected
2 to receive the notification or the offer contained in the notification.

3 (2) That the recipient will receive a prize or gift if the recipient
4 calls the seller.

5 (3) That if the recipient buys one or more items from the seller,
6 the recipient will also receive additional or other items, whether
7 or not of the same type as purchased, without further cost or at a
8 cost which the seller states or implies is less than the regular price
9 of such items.

10 However, this subdivision does not apply to the solicitation of
11 sales by a catalog seller who periodically issues and delivers
12 catalogs to potential purchasers by mail or by other means. This
13 exception only applies if the catalog includes a written description
14 or illustration and the sales price of each item of merchandise
15 offered for sale, includes at least 24 full pages of written material
16 or illustrations, is distributed in more than one state, and has an
17 annual circulation of not less than 250,000 customers.

18 (c) A solicitation or attempted solicitation which is made by
19 telephone in response to inquiries generated by advertisements on
20 behalf of the telephonic seller wherein it is represented or implied
21 that the seller is offering to sell to the prospective purchaser any
22 gold, silver, or other metals, including coins, diamonds, rubies,
23 sapphires, or other stones, coal or other minerals, or any interest
24 in oil, gas, or mineral fields, wells, or exploration sites, or any
25 other investment opportunity of any type whatsoever.

26 (d) A solicitation or attempted solicitation which is made by
27 telephone in response to inquiries generated by advertisements on
28 behalf of the telephonic seller wherein it is represented or implied
29 that the seller is offering to make a loan or to arrange or assist in
30 arranging a loan or to assist in providing information which may
31 lead to the obtaining of a loan, unless no payment of any kind is
32 made until the loan proceeds are disbursed to the borrower.

33 (e) For purposes of this article, “telephonic seller” or “seller”
34 does not include any of the following:

35 (1) A person offering or selling a security qualified under
36 Section 25110, 25120, or 25130 of the Corporations Code or
37 exempt from qualification under Chapter 1 (commencing with
38 Section 25100) of Part 2 of Division 1 of Title 4 of the
39 Corporations Code. The fact that a notice claiming an exemption
40 under the Corporate Securities Law of 1968 is filed with the

1 Department of ~~Corporations~~ *Financial Services* does not create an
2 exemption under this paragraph.

3 (2) A person licensed pursuant to Part 1 (commencing with
4 Section 10000) of Division 4, when the solicited transaction is
5 governed by that law.

6 (3) A person licensed pursuant to Chapter 9 (commencing with
7 Section 7000) of Division 3, when the solicited transaction is
8 governed by that law.

9 (4) A person licensed or certificated pursuant to Part 2
10 (commencing with Section 680) of Division 1 of the Insurance
11 Code, including a person licensed pursuant to Chapter 5
12 (commencing with Section 1621) thereof, when the solicited
13 transaction is governed by that law.

14 (5) A person offering or selling a franchise registered pursuant
15 to Section 31110 of the Corporations Code or exempt from
16 registration under Chapter 1 (commencing with Section 31100)
17 of Part 2 of Division 5 of Title 4 of the Corporations Code. The
18 fact that a notice claiming an exemption under the Franchise
19 Investment Law is filed with the Department of ~~Corporations~~
20 *Financial Services* does not create an exemption under this
21 paragraph.

22 (6) A person soliciting the sale of a seller assisted marketing
23 plan, as defined in Title 2.7 (commencing with Section 1812.200)
24 of Part 4 of Division 3 of the Civil Code, who has filed with the
25 Attorney General the documents required by Section 1812.203 of
26 the Civil Code.

27 (7) A person primarily soliciting the sale of a newspaper of
28 general circulation, as defined in Article 1 (commencing with
29 Section 6000) of Chapter 1 of Division 7 of Title 1 of the
30 Government Code, a magazine, or membership in a book or record
31 club whose program operates in conformity with the requirements
32 of Section 1584.5 of the Civil Code.

33 (8) A person soliciting business from prospective purchasers
34 who have previously purchased from the business enterprise for
35 which the person is calling.

36 (9) A person soliciting without the intent to complete and who
37 does not complete the sales presentation during the telephone
38 solicitation but completes the sales presentation at a later
39 face-to-face meeting between the solicitor and the prospective
40 purchaser. However, if a seller, directly following a telephone

1 solicitation, causes an individual whose primary purpose it is to
2 go to the prospective purchaser to collect the payment or deliver
3 any item purchased, this exemption does not apply.

4 (10) Any supervised financial institution or parent, subsidiary,
5 or subsidiary of parent thereof. As used in this paragraph,
6 “supervised financial institution” means any commercial bank,
7 trust company, savings and loan association, credit union, industrial
8 loan company, personal property broker, consumer finance lender,
9 commercial finance lender, or insurer, provided that the institution
10 is subject to supervision by an official or agency of this state or of
11 the United States.

12 (11) A person soliciting the sale of a preneed funeral
13 arrangement regulated by Article 9 (commencing with Section
14 7735) of Chapter 12 of Division 3.

15 (12) A person licensed pursuant to Chapter 19 (commencing
16 with Section 9600) of Division 3 when acting pursuant to that
17 licensure.

18 (13) A person soliciting the sale of services provided by a cable
19 television system licensed or franchised pursuant to Section 53066
20 of the Government Code or any other authority.

21 (14) A person or an affiliate of a person whose business is
22 regulated by the Public Utilities Commission.

23 (15) A person soliciting the sale of a commodity pursuant to
24 Part 2 (commencing with Section 58601) of Division 21 of the
25 Food and Agricultural Code, if the solicitation neither intends to,
26 nor actually results in, a sale which costs the purchaser in excess
27 of one hundred dollars (\$100).

28 (16) An issuer or subsidiary of an issuer that has a security listed
29 on a national securities exchange or designated as a national market
30 system security on an interdealer quotation system by the National
31 Association of Securities Dealers, Inc., if the exchange or
32 interdealer quotation system has been certified by rule or order of
33 the Commissioner of ~~Corporations~~ *Financial Services* under
34 subdivision (o) of Section 25100 of the Corporations Code. A
35 subsidiary of an issuer that qualifies for exemption under this
36 paragraph is not itself exempt unless not less than 60 percent of
37 the voting power of its shares is owned by the qualifying issuer or
38 issuers.

1 (17) A person soliciting exclusively the sale of telephone
2 answering services to be provided by that person or that person's
3 employer.

4 (18) A person soliciting a transaction regulated by the
5 Commodity Futures Trading Commission if the person is registered
6 or temporarily licensed for this activity with the Commodity
7 Futures Trading Commission under the Commodity Exchange Act
8 (7 U.S.C. Sec. 1 et seq.), and the registration or license has not
9 expired or been suspended or revoked.

10 (19) A person who sells coins or bullion at a price which is not
11 more than 25 percent more than the price at which the seller is
12 concurrently buying the same coins or bullion, if: (A) the seller
13 has had a retail location in California from which he or she has
14 been selling coins or bullion to the public in person for at least
15 three years; (B) the telephonic solicitations are not the person's
16 primary business and sales made telephonically make up less than
17 20 percent of the person's total retail sales; and (C) the person
18 claiming an exemption pursuant to this subdivision complies with
19 Section 17511.3, as applicable, and subdivision (p) of Section
20 17511.4.

21 (20) A person licensed pursuant to Chapter 14 (commencing
22 with Section 1800) of Division 1 of the Financial Code to receive
23 money for transmittal to foreign countries if the license has not
24 expired or been suspended or revoked.

25 (21) A person licensed as a residential mortgage lender or
26 servicer pursuant to Division 20 (commencing with Section 50000)
27 of the Financial Code, when acting under the authority of that
28 license.

29 (22) A corporation that meets all of the following conditions:

30 (A) It has been exempt from taxation under Section 23701e of
31 the Revenue and Taxation Code for a minimum of 10 years.

32 (B) It has maintained its principal purpose for a minimum of
33 10 years.

34 (C) It has been incorporated in the state for a minimum of 25
35 years.

36 (f) In any civil proceeding alleging a violation of this article,
37 the burden of proving an exemption or an exception from a
38 definition is upon the person claiming it, and in any criminal
39 proceeding alleging a violation of this article, the burden of

1 producing evidence to support a defense based upon an exemption
2 or an exception from a definition is upon the person claiming it.

3 (g) Compliance with this article does not satisfy nor substitute
4 for any requirements for license, registration, or regulation
5 mandated by other laws.

6 *SEC. 100. Section 17537.2 of the Business and Professions*
7 *Code is amended to read:*

8 17537.2. The following, when used as part of an advertising
9 plan or program defined in Section 17537.1, are deceptive and
10 constitute unfair trade practices:

11 (a) When, in order to utilize the incentive, the recipient is
12 requested to pay any money to any person or entity named or
13 referred to in the offer, or to purchase, rent, or otherwise pay that
14 person or entity for any product or service including a deposit,
15 whether returnable or not, whether payment is for an item, a
16 service, shipping, handling, insurance or payment for anything.

17 Notwithstanding the preceding paragraph, when the offered
18 incentive is a certificate or coupon redeemable for transportation,
19 accommodations, recreation, vacation, entertainment, or like
20 services, the offer may place a condition on the use of the incentive
21 which requires the recipient to pay directly to the transportation
22 company, the accommodation, recreation, vacation or entertainment
23 facility, or similar direct provider of like services, a refundable
24 deposit, not to exceed fifty dollars (\$50), to reserve space
25 availability or admission, only if the deposit shall be returned in
26 United States dollars immediately upon the recipient's arrival at
27 the location of the provider to whom the recipient paid the deposit.
28 If the incentive is such a certificate or coupon, and if
29 government-imposed taxes directly related to the service being
30 provided are not included in the incentive, the offer itself, in close
31 proximity to the description of the incentive which is evidenced
32 by the certificate or coupon, shall disclose those
33 government-imposed taxes which will be the recipient's
34 responsibility and the approximate dollar amount of those taxes.
35 A deposit from the recipient may be collected to cover the cost of
36 those government-imposed taxes.

37 (b) Stating or implying in the offer that the recipient is one of
38 a selected group to receive a particular incentive or one or more
39 of a group of incentives, without clearly and conspicuously
40 disclosing in close proximity to the statement or implied statement

1 of selection the total number of persons in that select group or the
2 odds of receiving the incentive or incentives. Statements of
3 selection which require such disclosure include such phrases as
4 “you are a finalist,” “we are sending this to a limited number of
5 people,” “either you or another named person has won the major
6 prize,” “if you do not respond, your incentive will be given to
7 someone else.”

8 (c) Stating or implying in the offer that the recipient is likely to
9 receive one or more of the offered incentives because other named
10 people have already received other named incentives, unless the
11 offer clearly and conspicuously discloses in close proximity to the
12 statement the recipient’s odds of receiving the identified incentive.

13 (d) When the solicitation states or implies that the recipient is
14 likely to receive an incentive which has a normal retail price which
15 is higher than that of another named incentive unless that statement
16 is true. For purposes of this section, a list of incentives implies
17 that the incentives are in descending or ascending order of value
18 unless the solicitation clearly and conspicuously negates the
19 implication in close proximity to the list.

20 (e) Describing an incentive or incentives in an untrue or
21 misleading manner. Untrue or misleading descriptions include
22 those which imply that the incentive being offered is of greater
23 fair market value or of a different kind or nature than a recipient
24 would be led to believe from a reasonable reading of the offer, or
25 which lists the recipient’s name in close proximity to a specific
26 incentive unless the offer clearly and conspicuously discloses
27 immediately next to or immediately under or above the recipient’s
28 name the recipient’s odds of receiving the specific incentive.

29 (f) Subdivision (a) shall not apply to an incentive constituting
30 an opportunity to stay at a hotel or other resort accommodations
31 at a discount from the standard rate for the hotel or resort
32 accommodations, if all of the following conditions are met:

33 (1) The fee to utilize the incentive and the requirement, if any,
34 to attend a sales presentation are clearly and conspicuously
35 disclosed in close proximity to the description of the offered
36 incentive.

37 (2) A statement appears in close proximity to the description of
38 the offered incentive and in substantially the following form: The
39 recipient is responsible for payment of any government-imposed

1 taxes directly related to the service being provided and any personal
2 expenses incurred when utilizing this offer.

3 (3) The accommodations to be occupied by the recipient of the
4 incentive are within a 20-mile radius of the property on which the
5 accommodations offered for sale are located or, if not within that
6 radius, the accommodations offered for sale are managed and
7 operated by the same person as, an affiliate (as defined in Section
8 150 of the Corporations Code) of, or a franchisee (as defined in
9 Section 20002) of, the manager and operator of the
10 accommodations to be occupied, and the manager and operator of
11 the accommodations offered for sale or the manager and operator
12 of the accommodations to be occupied is an issuer or subsidiary
13 of an issuer that has a security listed on a national securities
14 exchange or designated as a national market system security on
15 an interdealer quotation system by the National Association of
16 Securities Dealers, Inc. and the exchange or interdealer quotation
17 system has been certified by rule or order of the Commissioner of
18 ~~Corporations~~ *Financial Services* under subdivision (o) of Section
19 25100 of the Corporations Code. A subsidiary of an issuer that
20 qualifies under this paragraph does not itself qualify under this
21 paragraph unless not less than 60 percent of the voting power of
22 its shares is owned by the qualifying issuer or issuers.

23 (4) If the incentive is offered in conjunction with any additional
24 incentive or incentives or as one or more of a group of incentives,
25 the offer of such additional incentive or incentives shall comply
26 with Section 17537.1 and the following:

27 (A) The additional incentive or incentives are typically and
28 customarily included in a vacation package and may include, but
29 not be limited to, transportation, dining, entertainment, or
30 recreation.

31 (B) The fee and additional requirements, if any, to use the
32 additional incentive or incentives are clearly and conspicuously
33 disclosed in close proximity to the description of the offer of them.

34 *SEC. 101. Section 20009 of the Business and Professions Code*
35 *is amended to read:*

36 20009. The regulations, releases, guidelines and interpretive
37 opinions of the Commissioner of ~~Corporations~~ *Financial Services*
38 under the Franchise Investment Law (Division 5 (commencing
39 with Section 31000) of Title 4 of the Corporations Code) regarding
40 whether or not an agreement constitutes a “franchise” within the

1 meaning of that law shall be prima facie evidence of the scope and
2 extent of coverage of the definition of “franchise” under this
3 chapter; provided, however, the burden of proving an exemption
4 or an exception from a definition is upon the person claiming it.

5 *SEC. 102. Section 163 of the Corporations Code is amended*
6 *to read:*

7 163. “Corporation subject to the Banking Law” (Division 1
8 (commencing with Section 99) of the Financial Code) means:

9 (a) Any corporation which, with the approval of the
10 Commissioner of Financial ~~Institutions~~ *Services*, is incorporated
11 for the purpose of engaging in, or which is authorized by the
12 Commissioner of Financial ~~Institutions~~ *Services* to engage in, the
13 commercial banking business under Division 1 (commencing with
14 Section 99) of the Financial Code.

15 (b) Any corporation which, with the approval of the
16 Commissioner of Financial ~~Institutions~~ *Services*, is incorporated
17 for the purpose of engaging in, or which is authorized by the
18 Commissioner of Financial ~~Institutions~~ *Services* to engage in, the
19 industrial banking business under Division 1 (commencing with
20 Section 99) of the Financial Code.

21 (c) Any corporation (other than a corporation described in
22 subdivision (d)) which, with the approval of the Commissioner of
23 Financial ~~Institutions~~ *Services*, is incorporated for the purpose of
24 engaging in, or which is authorized by the Commissioner of
25 Financial ~~Institutions~~ *Services* to engage in, the trust business under
26 Division 1 (commencing with Section 99) of the Financial Code.

27 (d) Any corporation which is authorized by the Commissioner
28 of Financial ~~Institutions~~ *Services* and the Commissioner of
29 Insurance to maintain a title insurance department to engage in
30 title insurance business and a trust department to engage in trust
31 business; or

32 (e) Any corporation which, with the approval of the
33 Commissioner of Financial ~~Institutions~~ *Services*, is incorporated
34 for the purpose of engaging in, or which is authorized by the
35 Commissioner of Financial ~~Institutions~~ *Services* to engage in,
36 business under Article 1 (commencing with Section 3500), Chapter
37 19, Division 1 of the Financial Code.

38 *SEC. 103. Section 500 of the Corporations Code is amended*
39 *to read:*

1 500. Neither a corporation nor any of its subsidiaries shall
2 make any distribution to the corporation's shareholders (Section
3 166) except as follows:

4 (a) The distribution may be made if the amount of the retained
5 earnings of the corporation immediately prior thereto equals or
6 exceeds the amount of the proposed distribution.

7 (b) The distribution may be made if immediately after giving
8 effect thereto:

9 (1) The sum of the assets of the corporation (exclusive of
10 goodwill, capitalized research and development expenses and
11 deferred charges) would be at least equal to $1\frac{1}{4}$ times its liabilities
12 (not including deferred taxes, deferred income and other deferred
13 credits); and

14 (2) The current assets of the corporation would be at least equal
15 to its current liabilities or, if the average of the earnings of the
16 corporation before taxes on income and before interest expense
17 for the two preceding fiscal years was less than the average of the
18 interest expense of the corporation for those fiscal years, at least
19 equal to $1\frac{1}{4}$ times its current liabilities; provided, however, that
20 in determining the amount of the assets of the corporation profits
21 derived from an exchange of assets shall not be included unless
22 the assets received are currently realizable in cash; and provided,
23 further, that for the purpose of this subdivision "current assets"
24 may include net amounts which the board has determined in good
25 faith may reasonably be expected to be received from customers
26 during the 12-month period used in calculating current liabilities
27 pursuant to existing contractual relationships obligating those
28 customers to make fixed or periodic payments during the term of
29 the contract or, in the case of public utilities, pursuant to service
30 connections with customers, after in each case giving effect to
31 future costs not then included in current liabilities but reasonably
32 expected to be incurred by the corporation in performing those
33 contracts or providing service to utility customers. Paragraph (2)
34 of subdivision (b) is not applicable to a corporation which does
35 not classify its assets into current and fixed under generally
36 accepted accounting principles.

37 (c) The amount of any distribution payable in property shall,
38 for the purposes of this chapter, be determined on the basis of the
39 value at which the property is carried on the corporation's financial

statements in accordance with generally accepted accounting principles.

(d) For the purpose of applying this section to a distribution by a corporation of cash or property in payment by the corporation in connection with the purchase of its shares, there shall be added to retained earnings all amounts that had been previously deducted therefrom with respect to obligations incurred in connection with the corporation's repurchase of its shares and reflected on the corporation's balance sheet, but not in excess of the principal of the obligations that remain unpaid immediately prior to the distribution. In addition, there shall be deducted from liabilities all amounts that had been previously added thereto with respect to the obligations incurred in connection with the corporation's repurchase of its shares and reflected on the corporation's balance sheet, but not in excess of the principal of the obligations that will remain unpaid after the distribution, provided that no addition to retained earnings or deduction from liabilities under this subdivision shall occur on account of any obligation that is a distribution to the corporation's shareholders (Section 166) at the time the obligation is incurred.

(e) This section does not apply to a corporation licensed as a broker-dealer under Chapter 2 (commencing with Section 25210) of Part 3 of Division 1 of Title 4, if immediately after giving effect to any distribution the corporation is in compliance with the net capital rules of the Commissioner of ~~Corporations~~ *Financial Services* and the Securities and Exchange Commission.

SEC. 104. Section 1001 of the Corporations Code is amended to read:

1001. (a) A corporation may sell, lease, convey, exchange, transfer, or otherwise dispose of all or substantially all of its assets when the principal terms are approved by the board, and, unless the transaction is in the usual and regular course of its business, approved by the outstanding shares (Section 152), either before or after approval by the board and before or after the transaction. A transaction constituting a reorganization (Section 181) is subject to the provisions of Chapter 12 (commencing with Section 1200) and not this section (other than subdivision (d)). A transaction constituting a conversion (Section 161.9) is subject to the provisions of Chapter 11.5 (commencing with Section 1150) and not this section.

(b) Notwithstanding approval of the outstanding shares (Section 152), the board may abandon the proposed transaction without further action by the shareholders, subject to the contractual rights, if any, of third parties.

(c) The sale, lease, conveyance, exchange, transfer or other disposition may be made upon those terms and conditions and for that consideration as the board may deem in the best interests of the corporation. The consideration may be money, securities, or other property.

(d) If the acquiring party in a transaction pursuant to subdivision (a) of this section or subdivision (g) of Section 2001 is in control of or under common control with the disposing corporation, the principal terms of the sale must be approved by at least 90 percent of the voting power of the disposing corporation unless the disposition is to a domestic or foreign corporation or other business entity in consideration of the nonredeemable common shares or nonredeemable equity securities of the acquiring party or its parent.

(e) Subdivision (d) does not apply to any transaction if the Commissioner of ~~Corporations, the Commissioner of Financial Institutions~~ *Financial Services*, the Insurance Commissioner, or the Public Utilities Commission has approved the terms and conditions of the transaction and the fairness of those terms and conditions pursuant to Section 25142, Section 696.5 of the Financial Code, Section 838.5 of the Insurance Code, or Section 822 of the Public Utilities Code.

SEC. 105. Section 1101.1 of the Corporations Code is amended to read:

1101.1. Subdivision (c) of Section 1113 and the last two sentences of Section 1101 do not apply to any transaction if the Commissioner of ~~Corporations, the Commissioner of Financial Institutions~~ *Financial Services*, the Insurance Commissioner or, the Public Utilities Commission has approved the terms and conditions of the transaction and the fairness of those terms and conditions pursuant to Section 25142 or Section 696.5, 5750, or 5802 of the Financial Code, Section 838.5 of the Insurance Code, or Section 822 of the Public Utilities Code.

SEC. 106. Section 1300 of the Corporations Code is amended to read:

1300. (a) If the approval of the outstanding shares (Section 152) of a corporation is required for a reorganization under

1 subdivisions (a) and (b) or subdivision (e) or (f) of Section 1201,
2 each shareholder of the corporation entitled to vote on the
3 transaction and each shareholder of a subsidiary corporation in a
4 short-form merger may, by complying with this chapter, require
5 the corporation in which the shareholder holds shares to purchase
6 for cash at their fair market value the shares owned by the
7 shareholder which are dissenting shares as defined in subdivision
8 (b). The fair market value shall be determined as of the day before
9 the first announcement of the terms of the proposed reorganization
10 or short-form merger, excluding any appreciation or depreciation
11 in consequence of the proposed action, but adjusted for any stock
12 split, reverse stock split, or share dividend which becomes effective
13 thereafter.

14 (b) As used in this chapter, “dissenting shares” means shares
15 which come within all of the following descriptions:

16 (1) Which were not immediately prior to the reorganization or
17 short-form merger either (A) listed on any national securities
18 exchange certified by the Commissioner of ~~Corporations~~ *Financial*
19 *Services* under subdivision (o) of Section 25100 or (B) listed on
20 the National Market System of the NASDAQ Stock Market, and
21 the notice of meeting of shareholders to act upon the reorganization
22 summarizes this section and Sections 1301, 1302, 1303 and 1304;
23 provided, however, that this provision does not apply to any shares
24 with respect to which there exists any restriction on transfer
25 imposed by the corporation or by any law or regulation; and
26 provided, further, that this provision does not apply to any class
27 of shares described in subparagraph (A) or (B) if demands for
28 payment are filed with respect to 5 percent or more of the
29 outstanding shares of that class.

30 (2) Which were outstanding on the date for the determination
31 of shareholders entitled to vote on the reorganization and (A) were
32 not voted in favor of the reorganization or, (B) if described in
33 subparagraph (A) or (B) of paragraph (1) (without regard to the
34 provisos in that paragraph), were voted against the reorganization,
35 or which were held of record on the effective date of a short-form
36 merger; provided, however, that subparagraph (A) rather than
37 subparagraph (B) of this paragraph applies in any case where the
38 approval required by Section 1201 is sought by written consent
39 rather than at a meeting.

(3) Which the dissenting shareholder has demanded that the corporation purchase at their fair market value, in accordance with Section 1301.

(4) Which the dissenting shareholder has submitted for endorsement, in accordance with Section 1302.

(c) As used in this chapter, “dissenting shareholder” means the recordholder of dissenting shares and includes a transferee of record.

SEC. 107. Section 2207 of the Corporations Code is amended to read:

2207. (a) A corporation is liable for a civil penalty in an amount not exceeding one million dollars (\$1,000,000) if the corporation does both of the following:

(1) Has actual knowledge that an officer, director, manager, or agent of the corporation does any of the following:

(A) Makes, publishes, or posts, or has made, published, or posted, either generally or privately to the shareholders or other persons, either of the following:

(i) An oral, written, or electronically transmitted report, exhibit, notice, or statement of its affairs or pecuniary condition that contains a material statement or omission that is false and intended to give the shares of stock in the corporation a materially greater or a materially less apparent market value than they really possess.

(ii) An oral, written, or electronically transmitted report, prospectus, account, or statement of operations, values, business, profits, or expenditures, that includes a material false statement or omission intended to give the shares of stock in the corporation a materially greater or a materially less apparent market value than they really possess.

(B) Refuses or has refused to make any book entry or post any notice required by law in the manner required by law.

(C) Misstates or conceals or has misstated or concealed from a regulatory body a material fact in order to deceive a regulatory body to avoid a statutory or regulatory duty, or to avoid a statutory or regulatory limit or prohibition.

(2) Within 30 days after actual knowledge is acquired of the actions described in paragraph (1), the corporation knowingly fails to do both of the following:

(A) Notify the Attorney General or appropriate government agency in writing, unless the corporation has actual knowledge

1 that the Attorney General or appropriate government agency has
2 been notified.

3 (B) Notify its shareholders in writing, unless the corporation
4 has actual knowledge that the shareholders have been notified.

5 (b) The requirement for notification under this section is not
6 applicable if the action taken or about to be taken by the
7 corporation, or by an officer, director, manager, or agent of the
8 corporation under paragraph (1) of subdivision (a), is abated within
9 the time prescribed for reporting, unless the appropriate
10 government agency requires disclosure by regulation.

11 (c) If the action reported to the Attorney General pursuant to
12 this section implicates the government authority of an agency other
13 than the Attorney General, the Attorney General shall promptly
14 forward the written notice to that agency.

15 (d) If the Attorney General was not notified pursuant to
16 subparagraph (A) of paragraph (2) of subdivision (a), but the
17 corporation reasonably and in good faith believed that it had
18 complied with the notification requirements of this section by
19 notifying a government agency listed in paragraph (5) of
20 subdivision (e), no penalties shall apply.

21 (e) For purposes of this section:

22 (1) “Manager” means a person having both of the following:

23 (A) Management authority over a business entity.

24 (B) Significant responsibility for an aspect of a business that
25 includes actual authority for the financial operations or financial
26 transactions of the business.

27 (2) “Agent” means a person or entity authorized by the
28 corporation to make representations to the public about the
29 corporation’s financial condition and who is acting within the
30 scope of the agency when the representations are made.

31 (3) “Shareholder” means a person or entity that is a shareholder
32 of the corporation at the time the disclosure is required pursuant
33 to subparagraph (B) of paragraph (2) of subdivision (a).

34 (4) “Notify its shareholders” means to give sufficient description
35 of an action taken or about to be taken that would constitute acts
36 or omissions as described in paragraph (1) of subdivision (a). A
37 notice or report filed by a corporation with the United States
38 Securities and Exchange Commission that relates to the facts and
39 circumstances giving rise to an obligation under paragraph (1) of
40 subdivision (a) shall satisfy all notice requirements arising under

1 paragraph (2) of subdivision (a), but shall not be the exclusive
2 means of satisfying the notice requirements, provided that the
3 Attorney General or appropriate agency is informed in writing that
4 the filing has been made together with a copy of the filing or an
5 electronic link where it is available online without charge.

6 (5) “Appropriate government agency” means an agency on the
7 following list that has regulatory authority with respect to the
8 financial operations of a corporation:

9 (A) Department of ~~Corporations~~ *Financial Services*.

10 (B) Department of Insurance.

11 ~~(C) Department of Financial Institutions.~~

12 ~~(D)~~

13 (C) Department of Managed Health Care.

14 ~~(E)~~

15 (D) United States Securities and Exchange Commission.

16 (6) “Actual knowledge of the corporation” means the knowledge
17 an officer or director of a corporation actually possesses or does
18 not consciously avoid possessing, based on an evaluation of
19 information provided pursuant to the corporation’s disclosure
20 controls and procedures.

21 (7) “Refuse to make a book entry” means the intentional decision
22 not to record an accounting transaction when all of the following
23 conditions are satisfied:

24 (A) The independent auditors required recordation of an
25 accounting transaction during the course of an audit.

26 (B) The audit committee of the corporation has not approved
27 the independent auditor’s recommendation.

28 (C) The decision is made for the primary purpose of rendering
29 the financial statements materially false or misleading.

30 (8) “Refuse to post any notice required by law” means an
31 intentional decision not to post a notice required by law when all
32 of the following conditions exist:

33 (A) The decision not to post the notice has not been approved
34 by the corporation’s audit committee.

35 (B) The decision is intended to give the shares of stock in the
36 corporation a materially greater or a materially less apparent market
37 value than they really possess.

38 (9) “Misstate or conceal material facts from a regulatory body”
39 means an intentional decision not to disclose material facts when
40 all of the following conditions exist:

1 (A) The decision not to disclose material facts has not been
2 approved by the corporation's audit committee.

3 (B) The decision is intended to give the shares of stock in the
4 corporation a materially greater or a materially less apparent market
5 value than they really possess.

6 (10) "Material false statement or omission" means an untrue
7 statement of material fact or an omission to state a material fact
8 necessary in order to make the statements made under the
9 circumstances under which they were made not misleading.

10 (11) "Officer" means any person as set forth in Rule 16A-1
11 promulgated under the Securities Exchange Act of 1934 or any
12 successor regulation thereto, except an officer of a subsidiary
13 corporation who is not also an officer of the parent corporation.

14 (f) This section only applies to corporations that are issuers, as
15 defined in Section 2 of the Sarbanes-Oxley Act of 2002 (15 U.S.C.
16 Sec. 7201 and following).

17 (g) An action to enforce this section may only be brought by
18 the Attorney General or a district attorney or city attorney in the
19 name of the people of the State of California.

20 *SEC. 108. Section 7813.5 of the Corporations Code is amended*
21 *to read:*

22 7813.5. (a) A mutual benefit corporation may amend its articles
23 to change its status to that of a public benefit corporation, a
24 religious corporation, a business corporation, or a cooperative
25 corporation by complying with this section and the other sections
26 of this chapter.

27 (b) Except as authorized by Section 7811 or unless the
28 corporation has no members, an amendment to change its status
29 to a public benefit corporation or religious corporation shall: (i)
30 be approved by the members (Section 5034), and the fairness of
31 the amendment to the members shall be approved by the
32 Commissioner of ~~Corporations~~ *Financial Services* pursuant to
33 Section 25142; (ii) be approved by the members (Section 5034)
34 in an election conducted by written ballot pursuant to Section 7513
35 in which no negative votes are cast; or (iii) be approved by 100
36 percent of the voting power.

37 (c) Amended articles authorized by this section shall include
38 the provisions which would have been required (other than the
39 name of the initial agent for service of process if a statement has
40 been filed pursuant to Section 8210), and may in addition only

1 include those provisions which would have been permitted, in
2 original articles filed by the type of corporation (public benefit,
3 religious, business, or cooperative) into which the mutual benefit
4 corporation is changing its status.

5 (d) At the time of filing a certificate of amendment to change
6 status to a public benefit corporation, a corporation shall furnish
7 an additional copy of the certificate of amendment to the Secretary
8 of State who shall forward that copy to the Attorney General.

9 (e) In the case of a change of status to a business corporation
10 or a cooperative corporation, if the Franchise Tax Board has issued
11 a determination exempting the corporation from tax as provided
12 in Section 23701 of the Revenue and Taxation Code, the
13 corporation shall be subject to Section 23221 of the Revenue and
14 Taxation Code upon filing the certificate of amendment.

15 *SEC. 109. Section 8011.5 of the Corporations Code is amended*
16 *to read:*

17 8011.5. Each membership of the same class of any constituent
18 corporation (other than the cancellation of memberships held by
19 a surviving corporation or its parent or a wholly owned subsidiary
20 of either in a constituent corporation) shall be treated equally with
21 respect to any distribution of cash, property, rights or securities
22 unless: (i) all members of the class consent or (ii) the
23 Commissioner of ~~Corporations~~ *Financial Services* has approved
24 the terms and conditions of the transaction and the fairness of such
25 terms pursuant to Section 25142.

26 *SEC. 110. Section 12504 of the Corporations Code is amended*
27 *to read:*

28 12504. (a) A corporation may amend its articles to change its
29 status to that of a nonprofit public benefit corporation, a nonprofit
30 mutual benefit corporation, a nonprofit religious corporation, or a
31 business corporation by complying with this section and the other
32 sections of this chapter.

33 (b) Except as authorized by Section 12501 or unless the
34 corporation has no members, an amendment to change its status
35 to a nonprofit public benefit corporation or a nonprofit religious
36 corporation shall: (1) be approved by the members (Section 12224),
37 and the fairness of the amendment to the members shall be
38 approved by the Commissioner of ~~Corporations~~ *Financial Services*
39 pursuant to Section 25142; or (2) be approved by the members
40 (Section 12224) in an election conducted by written ballot pursuant

to Section 12463 in which no negative votes are cast; or (3) be approved by 100 percent of the voting power.

(c) Amended articles authorized by this section shall include the provisions which would have been required (other than the name of the initial agent for service of process if a statement has been filed pursuant to Section 12570), and may in addition only include those provisions which would have been permitted, in original articles filed by the type of corporation (nonprofit public benefit, nonprofit mutual benefit, nonprofit religious, or business) into which the corporation is changing its status.

(d) At the time of filing a certificate of amendment to change status to a nonprofit public benefit corporation, a corporation shall furnish an additional copy of the certificate of amendment to the Secretary of State who shall forward that copy to the Attorney General.

SEC. 111. Section 12532 of the Corporations Code is amended to read:

12532. Each membership of the same class of any constituent corporation (other than the cancellation of memberships held by a surviving corporation or its parent or a wholly owned subsidiary of either in a constituent corporation) shall be treated equally with respect to any distribution of cash, property, rights or securities unless: (a) all members of the class consent or (b) the Commissioner of ~~Corporations~~ *Financial Services* has approved the terms and conditions of the transaction and the fairness of such terms pursuant to Section 25142.

SEC. 112. Section 13205 of the Corporations Code is amended to read:

13205. No association is subject in any manner to the terms of the Corporate Securities Law and all associations may issue their membership certificates or stock or other securities as provided in this division without the necessity of any permit from the Commissioner of ~~Corporations~~ *Financial Services*.

SEC. 113. Section 13406 of the Corporations Code is amended to read:

13406. (a) Subject to the provisions of subdivision (b), shares of capital stock in a professional corporation may be issued only to a licensed person or to a person who is licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices, and any shares issued in violation of

1 this restriction shall be void. Unless there is a public offering of
2 securities by a professional corporation or by a foreign professional
3 corporation in this state, its financial statements shall be treated
4 by the Commissioner of ~~Corporations~~ *Financial Services* as
5 confidential, except to the extent that such statements shall be
6 subject to subpoena in connection with any judicial or
7 administrative proceeding, and may be admissible in evidence
8 therein. No shareholder of a professional corporation or of a foreign
9 professional corporation qualified to render professional services
10 in this state shall enter into a voting trust, proxy, or any other
11 arrangement vesting another person (other than another person
12 who is a shareholder of the same corporation) with the authority
13 to exercise the voting power of any or all of his or her shares, and
14 any such purported voting trust, proxy or other arrangement shall
15 be void.

16 (b) A professional law corporation may be incorporated as a
17 nonprofit public benefit corporation under the Nonprofit Public
18 Benefit Corporation Law under either of the following
19 circumstances:

20 (1) The corporation is a qualified legal services project or a
21 qualified support center within the meaning of subdivisions (a)
22 and (b) of Section 6213 of the Business and Professions Code.

23 (2) The professional law corporation otherwise meets all of the
24 requirements and complies with all of the provisions of the
25 Nonprofit Public Benefit Corporation Law, as well as all of the
26 following requirements:

27 (A) All of the members of the corporation, if it is a membership
28 organization as described in the Nonprofit Corporation Law, are
29 persons licensed to practice law in California.

30 (B) All of the members of the professional law corporation's
31 board of directors are persons licensed to practice law in California.

32 (C) Seventy percent of the clients to whom the corporation
33 provides legal services are lower income persons as defined in
34 Section 50079.5 of the Health and Safety Code, and to other
35 persons who would not otherwise have access to legal services.

36 (D) The corporation shall not enter into contingency fee
37 contracts with clients.

38 (c) A professional law corporation incorporated as a nonprofit
39 public benefit corporation that is a recipient in good standing as
40 defined in subdivision (c) of Section 6213 of the Business and

1 Professions Code shall be deemed to have satisfied all of the filing
2 requirements of a professional law corporation under Sections
3 6161.1, 6162, and 6163 of the Business and Professions Code.

4 *SEC. 114. Section 13408.5 of the Corporations Code is*
5 *amended to read:*

6 13408.5. No professional corporation may be formed so as to
7 cause any violation of law, or any applicable rules and regulations,
8 relating to fee splitting, kickbacks, or other similar practices by
9 physicians and surgeons or psychologists, including, but not limited
10 to, Section 650 or subdivision (e) of Section 2960 of the Business
11 and Professions Code. A violation of any such provisions shall be
12 grounds for the suspension or revocation of the certificate of
13 registration of the professional corporation. The Commissioner of
14 ~~Corporations Financial Services~~ or the Director of the Department
15 of Managed Health Care may refer any suspected violation of such
16 provisions to the governmental agency regulating the profession
17 in which the corporation is, or proposes to be engaged.

18 *SEC. 115. Section 14025 of the Corporations Code is amended*
19 *to read:*

20 14025. The director shall do all of the following:

21 (a) Administer this part.

22 (b) In accordance with program resources, stimulate the
23 formation of corporations and the use of branch offices for the
24 purposes of making this program accessible to all areas of the state.

25 (c) Expeditiously approve or disapprove the articles of
26 incorporation and any subsequent amendments to the articles of
27 incorporation of a corporation.

28 (d) Require each corporation to submit an annual written plan
29 of operation.

30 (e) Review reports from the Department of Financial ~~Institutions~~
31 *Services* and inform corporations as to what corrective action is
32 required.

33 (f) Examine, or cause to be examined, at any reasonable time,
34 all books, records, and documents of every kind, and the physical
35 properties of a corporation. The inspection shall include the right
36 to make copies, extracts, and search records.

37 *SEC. 116. Section 15679.2 of the Corporations Code is*
38 *amended to read:*

39 15679.2. (a) If the approval of outstanding limited partnership
40 interests is required for a limited partnership to participate in a

1 reorganization, pursuant to the limited partnership agreement of
2 the partnership, or otherwise, then each limited partner of the
3 limited partnership holding those interests may, by complying with
4 this article, require the limited partnership to purchase for cash, at
5 its fair market value, the interest owned by the limited partner in
6 the limited partnership, if the interest is a dissenting interest as
7 defined in subdivision (b). The fair market value shall be
8 determined as of the day before the first announcement of the terms
9 of the proposed reorganization, excluding any appreciation or
10 depreciation in consequence of the proposed reorganization.

11 (b) As used in this article, “dissenting interest” means the
12 interest of a limited partner that satisfies all of the following
13 conditions:

14 (1) Either:

15 (A) The interest was not, immediately prior to the
16 reorganization, either (i) listed on any national securities exchange
17 certified by the Commissioner of ~~Corporations~~ *Financial Services*
18 under subdivision (o) of Section 25100, or (ii) listed on the list of
19 OTC margin stocks issued by the Board of Governors of the
20 Federal Reserve System, provided that in either such instance the
21 limited partnership whose outstanding interests are so listed
22 provides, in its notice to limited partners requesting their approval
23 of the proposed reorganization, a summary of the provisions of
24 this section and Sections 15679.3, 15679.4, 15679.5, and 15679.6.

25 (B) Demands for payment are filed with respect to 5 percent or
26 more of the outstanding interests of any class of interests described
27 in clause (i) or (ii) of subparagraph (A).

28 (2) Which was outstanding on the date for the determination of
29 limited partners entitled to vote on the reorganization.

30 (3) (i) Which was not voted in favor of the reorganization, or
31 (ii) if the interest is described in clause (i) or (ii) of subparagraph
32 (A) of paragraph (1), was voted against the reorganization;
33 provided, however, that clause (i) rather than clause (ii) of this
34 paragraph applies in any event where the approval for the proposed
35 reorganization is sought by written consent rather than at a meeting.

36 (4) Which the limited partner has demanded that the limited
37 partnership purchase at its fair market value in accordance with
38 Section 15679.3.

39 (5) Which the limited partner submits for endorsement, if
40 applicable, in accordance with Section 15679.4.

1 (c) As used in this article, “dissenting limited partner” means
2 the recordholder of a dissenting interest, and includes an assignee
3 of record of such an interest.

4 *SEC. 117. Section 15911.21 of the Corporations Code is*
5 *amended to read:*

6 15911.21. (a) If the approval of outstanding limited partnership
7 interests is required for a limited partnership to participate in a
8 reorganization, pursuant to the limited partnership agreement of
9 the partnership, or otherwise, then each limited partner of the
10 limited partnership holding those interests may, by complying with
11 this article, require the limited partnership to purchase for cash, at
12 its fair market value, the interest owned by the limited partner in
13 the limited partnership, if the interest is a dissenting interest as
14 defined in subdivision (b). The fair market value shall be
15 determined as of the day before the first announcement of the terms
16 of the proposed reorganization, excluding any appreciation or
17 depreciation in consequence of the proposed reorganization.

18 (b) As used in this article, “dissenting interest” means the
19 interest of a limited partner that satisfies all of the following
20 conditions:

21 (1) Either:

22 (A) Was not, immediately prior to the reorganization, either (i)
23 listed on any national securities exchange certified by the
24 Commissioner of ~~Corporations~~ *Financial Services* under
25 subdivision (o) of Section 25100, or (ii) listed on the list of OTC
26 margin stocks issued by the Board of Governors of the Federal
27 Reserve System, provided that in either such instance the limited
28 partnership whose outstanding interests are so listed provides, in
29 its notice to limited partners requesting their approval of the
30 proposed reorganization, a summary of the provisions of this
31 section and Sections 15911.22, 15911.23, 15911.24, and 15911.25.

32 (B) If the interest is of a class of interests listed as described in
33 clause (i) or (ii) of subparagraph (A), demands for payment are
34 filed with respect to 5 percent or more of the outstanding interests
35 of that class.

36 (2) Was outstanding on the date for the determination of limited
37 partners entitled to vote on the reorganization.

38 (3) (A) Was not voted in favor of the reorganization, or (B) if
39 the interest is described in clause (i) or (ii) of subparagraph (A) of
40 paragraph (1), was voted against the reorganization; provided,

1 however, that clause (A) rather than clause (B) of this paragraph
2 applies in any event where the approval for the proposed
3 reorganization is sought by written consent rather than at a meeting.

4 (4) The limited partner has demanded that it be purchased by
5 the limited partnership at its fair market value in accordance with
6 Section 15911.22.

7 (5) The limited partner has submitted it for endorsement, if
8 applicable, in accordance with Section 15911.23.

9 (c) As used in this article, “dissenting limited partner” means
10 the recordholder of a dissenting interest, and includes an assignee
11 of record of such an interest.

12 *SEC. 118. Section 17656 of the Corporations Code is amended*
13 *to read:*

14 17656. (a) A limited liability company is liable for a civil
15 penalty in an amount not exceeding one million dollars
16 (\$1,000,000) if the limited liability company does both of the
17 following:

18 (1) Has actual knowledge that a member, officer, manager, or
19 agent of the limited liability company does any of the following:

20 (A) Makes, publishes, or posts, or has made, published, or
21 posted, either generally or privately to the shareholders or other
22 persons, either of the following:

23 (i) An oral, written, or electronically transmitted report, exhibit,
24 notice, or statement of its affairs or pecuniary condition that
25 contains a material statement or omission that is false and intended
26 to give membership shares in the limited liability company a
27 materially greater or a materially less apparent market value than
28 they really possess.

29 (ii) An oral, written, or electronically transmitted report,
30 prospectus, account, or statement of operations, values, business,
31 profits, or expenditures that includes a material false statement or
32 omission intended to give membership shares in the limited liability
33 company a materially greater or a materially less apparent market
34 value than they really possess.

35 (B) Refuses or has refused to make any book entry or post any
36 notice required by law in the manner required by law.

37 (C) Misstates or conceals or has misstated or concealed from a
38 regulatory body a material fact in order to deceive a regulatory
39 body to avoid a statutory or regulatory duty, or to avoid a statutory
40 or regulatory limit or prohibition.

1 (2) Within 30 days after actual knowledge is acquired of the
2 actions described in paragraph (1), the limited liability company
3 knowingly fails to do both of the following:

4 (A) Notify the Attorney General or appropriate government
5 agency in writing, unless the limited liability company has actual
6 knowledge that the Attorney General or appropriate government
7 agency has been notified.

8 (B) Notify its members and investors in writing, unless the
9 limited liability company has actual knowledge that the members
10 and investors have been notified.

11 (b) The requirement for notification under this section is not
12 applicable if the action taken or about to be taken by the limited
13 liability company, or by a member, officer, manager, or agent of
14 the limited liability company under paragraph (1) of subdivision
15 (a), is abated within the time prescribed for reporting, unless the
16 appropriate government agency requires disclosure by regulation.

17 (c) If the action reported to the Attorney General pursuant to
18 this section implicates the government authority of an agency other
19 than the Attorney General, the Attorney General shall promptly
20 forward the written notice to that agency.

21 (d) If the Attorney General was not notified pursuant to
22 subparagraph (A) of paragraph (2) of subdivision (a), but the
23 limited liability company reasonably and in good faith believed
24 that it had complied with the notification requirements of this
25 section by notifying a government agency listed in paragraph (5)
26 of subdivision (e), no penalties shall apply.

27 (e) For purposes of this section:

28 (1) “Manager” means a person defined by subdivision (w) of
29 Section 17001 having both of the following:

30 (A) Management authority over the limited liability company.

31 (B) Significant responsibility for an aspect of the limited liability
32 company that includes actual authority for the financial operations
33 or financial transactions of the limited liability company.

34 (2) “Agent” means a person or entity authorized by the limited
35 liability company to make representations to the public about the
36 limited liability company’s financial condition and who is acting
37 within the scope of the agency when the representations are made.

38 (3) “Member” means a person as defined by subdivision (x) of
39 Section 17001 that is a member of the limited liability company

1 at the time the disclosure is required pursuant to subparagraph (B)
2 of paragraph (2) of subdivision (a).

3 (4) “Notify its members” means to give sufficient description
4 of an action taken or about to be taken that would constitute acts
5 or omissions as described in paragraph (1) of subdivision (a). A
6 notice or report filed by a limited liability company with the United
7 States Securities and Exchange Commission that relates to the
8 facts and circumstances giving rise to an obligation under
9 paragraph (1) of subdivision (a) shall satisfy all notice requirements
10 arising under paragraph (2) of subdivision (a) but shall not be the
11 exclusive means of satisfying the notice requirements, provided
12 that the Attorney General or appropriate agency is informed in
13 writing that the filing has been made together with a copy of the
14 filing or an electronic link where it is available online without
15 charge.

16 (5) “Appropriate government agency” means an agency on the
17 following list that has regulatory authority with respect to the
18 financial operations of a limited liability company:

19 (A) Department of ~~Corporations~~ *Financial Services*.

20 (B) Department of Insurance.

21 ~~(C) Department of Financial Institutions.~~

22 ~~(D)~~

23 (C) Department of Managed Health Care.

24 ~~(E)~~

25 (D) United States Securities and Exchange Commission.

26 (6) “Actual knowledge of the limited liability company” means
27 the knowledge a member, officer, or manager of a limited liability
28 company actually possesses or does not consciously avoid
29 possessing, based on an evaluation of information provided
30 pursuant to the limited liability company’s disclosure controls and
31 procedures.

32 (7) “Refuse to make a book entry” means the intentional decision
33 not to record an accounting transaction when all of the following
34 conditions are satisfied:

35 (A) The independent auditors required recordation of an
36 accounting transaction during the course of an audit.

37 (B) The audit committee of the limited liability company has
38 not approved the independent auditor’s recommendation.

39 (C) The decision is made for the primary purpose of rendering
40 the financial statements materially false or misleading.

1 (8) “Refuse to post any notice required by law” means an
2 intentional decision not to post a notice required by law when all
3 of the following conditions exist:

4 (A) The decision not to post the notice has not been approved
5 by the limited liability company’s audit committee.

6 (B) The decision is intended to give the membership shares in
7 the limited liability company a materially greater or a materially
8 less apparent market value than they really possess.

9 (9) “Misstate or conceal material facts from a regulatory body”
10 means an intentional decision not to disclose material facts when
11 all of the following conditions exist:

12 (A) The decision not to disclose material facts has not been
13 approved by the limited liability company’s audit committee.

14 (B) The decision is intended to give the membership shares in
15 the limited liability company a greater or a less apparent market
16 value than they really possess.

17 (10) “Material false statement or omission” means an untrue
18 statement of material fact or an omission to state a material fact
19 necessary in order to make the statements made under the
20 circumstances under which they were made not misleading.

21 (11) “Officer” means a person appointed pursuant to Section
22 17154, except an officer of a specified subsidiary limited liability
23 company who is not also an officer of the parent limited liability
24 company.

25 (f) This section only applies to limited liability companies that
26 are issuers, as defined in Section 2 of the Sarbanes-Oxley Act of
27 2002 (15 U.S.C. Sec. 7201 and following).

28 (g) An action to enforce this section may only be brought by
29 the Attorney General or a district attorney or city attorney in the
30 name of the people of the State of California.

31 *SEC. 119. Section 23000 of the Corporations Code is amended*
32 *to read:*

33 23000. “Real estate investment trust” as used in this part means
34 any unincorporated association or trust formed to engage in
35 business and managed by, or under the direction of, one or more
36 trustees for the benefit of the holders or owners (hereinafter in this
37 part “shareowners”) of transferable shares of beneficial interest in
38 the trust estate (hereinafter in this part “shares”) and which meets
39 one of the following two tests:

(a) It received, prior to the effective date of this part, an order, permit or qualification from the Commissioner of ~~Corporations~~ *Financial Services* pursuant to the provisions of the Corporate Securities Law of 1968 or any predecessor statute finding that it was a real estate investment trust, notwithstanding the subsequent amendment, suspension or revocation of any such finding, order, permit or qualification, and it has for one or more of its three fiscal years immediately prior to the effective date of this part complied with, or in good faith filed a federal income tax return on the basis that it has complied with the requirements for real estate investment trusts set forth in Section 856 of the Federal Internal Revenue Code; or

(b) It is formed for the purpose of engaging in business as a real estate investment trust under Part II of Subchapter M of Chapter 1 of Subtitle A of the Federal Internal Revenue Code of 1954, as amended from time to time; the sale of its shares has been qualified at any time by the Commissioner of ~~Corporations~~ *Financial Services* pursuant to the Corporate Securities Law of 1968; and in good faith it has commenced business as a real estate investment trust.

An unincorporated association or trust which otherwise meets the requirements of this section shall not be affected in its status as a real estate investment trust whether or not it is in fact taxable for any year or years under Part II of Subchapter M of Chapter 1 of Subtitle A of the Federal Internal Revenue Code of 1954, as amended from time to time.

SEC. 120. Section 25004 of the Corporations Code is amended to read:

25004. (a) “Broker-dealer” means any person engaged in the business of effecting transactions in securities in this state for the account of others or for his own account. “Broker-dealer” also includes a person engaged in the regular business of issuing or guaranteeing options with regard to securities not of his own issue. “Broker-dealer” does not include any of the following:

- (1) Any other issuer.
- (2) An agent, when an employee of a broker-dealer or issuer.
- (3) A bank, trust company, or savings and loan association.
- (4) Any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business.

1 (5) A person who has no place of business in this state if he
2 effects transactions in this state exclusively with (A) the issuers
3 of the securities involved in the transactions or (B) other
4 broker-dealers.

5 (6) A broker licensed by the ~~Real Estate~~ Commissioner of
6 *Financial Services* of this state when engaged in transactions in
7 securities exempted by subdivision (f) or (p) of Section 25100 or
8 in securities the issuance of which is subject to authorization by
9 the ~~Real Estate~~ Commissioner of *Financial Services* of this state
10 or in transactions exempted by subdivision (e) of Section 25102.

11 (7) An exchange certified by the Commissioner of ~~Corporations~~
12 *Financial Services* pursuant to this section when it is issuing or
13 guaranteeing options. The commissioner may by order certify an
14 exchange under this section upon such conditions as he *or she* by
15 rule or order deems appropriate, and upon notice and opportunity
16 to be heard he *or she* may suspend or revoke such certification, if
17 he *or she* finds such certification, suspension, or revocation to be
18 in the public interest and necessary and appropriate for the
19 protection of investors.

20 (b) For purposes of this section, an agent is an employee of a
21 broker-dealer under paragraph (2) of subdivision (a) when the
22 agent is employed by or associated with the broker-dealer under
23 all of the following conditions:

24 (1) The agent is subject to the supervision and control of the
25 broker-dealer.

26 (2) The agent performs under the name, authority, and marketing
27 policies of the broker-dealer.

28 (3) The agent discloses to investors the identity of the
29 broker-dealer.

30 (4) The agent is reported pursuant to subdivision (c) of Section
31 25210 and the rules adopted thereunder.

32 *SEC. 121. Section 25005 of the Corporations Code is amended*
33 *to read:*

34 25005. "Commissioner" means the Commissioner of
35 ~~Corporations~~ *Financial Services*.

36 *SEC. 122. Section 25014.6 of the Corporations Code is*
37 *amended to read:*

38 25014.6. "Rollup transaction" means any transaction or series
39 of transactions that directly or indirectly through acquisition or

1 otherwise involves the combination or reorganization of one or
2 more rollup participants and is one of the following:

3 (a) The offer or sale of securities by a successor entity, whether
4 newly formed or previously existing, to one or more investors of
5 the rollup participants to be combined or reorganized.

6 (b) The acquisition of the successor entity's securities by the
7 rollup participants being combined or reorganized; provided
8 however, that a rollup transaction shall not include any transaction
9 that:

10 (1) The Securities and Exchange Commission exempts from
11 the definition of a rollup transaction pursuant to subparagraph (c)
12 (ii) of Item 901 of Regulation S-K adopted by the Securities and
13 Exchange Commission.

14 (2) Is determined to be exempt from this definition by the
15 Commissioner of ~~Corporations~~ *Financial Services* upon his or her
16 determination that this action is in the public interest and consistent
17 with the protection of investors.

18 (3) Involves one or more limited partnerships all of the securities
19 of which are, prior to the transaction, securities for which
20 transactions are reported under a transaction reporting plan declared
21 effective before January 1, 1991, by the Securities and Exchange
22 Commission under Section 11A of the Securities Exchange Act
23 of 1934.

24 (4) Involves only those issuers not required to register or report
25 under Section 12 of the Securities Exchange Act of 1934 where
26 the resulting issuer is also not required to register or report under
27 Section 12.

28 (5) Involves the reorganization to corporate, trust, or association
29 form or restructuring of a single limited partnership if, as a
30 consequence of the proposed transaction there will be no
31 significant, adverse change in any of the following: voting rights,
32 the term of existence of the entity, management compensation, or
33 investment objectives.

34 (6) Involves the reorganization to corporate, trust, or association
35 form or restructuring of a single limited partnership if each investor
36 is provided an option to retain a security under substantially the
37 same terms and conditions as the original issue.

38 (7) Involves the reorganization to corporate, trust, or association
39 form or restructuring of a single limited partnership if transactions
40 in the security issued as a result of the reorganization or

1 restructuring are not reported under a transaction reporting plan
2 declared effective before January 1, 1991, by the Securities and
3 Exchange Commission under Section 11A of the Securities
4 Exchange Act of 1934.

5 *SEC. 123. Section 25100 of the Corporations Code is amended*
6 *to read:*

7 25100. The following securities are exempted from Sections
8 25110, 25120, and 25130:

9 (a) Any security (including a revenue obligation) issued or
10 guaranteed by the United States, any state, any city, county, city
11 and county, public district, public authority, public corporation,
12 public entity, or political subdivision of a state or any agency or
13 corporate or other instrumentality of any one or more of the
14 foregoing; or any certificate of deposit for any of the foregoing.

15 (b) Any security issued or guaranteed by Canada, any Canadian
16 province, any political subdivision or municipality of that province,
17 or by any other foreign government with which the United States
18 currently maintains diplomatic relations, if the security is
19 recognized as a valid obligation by the issuer or guarantor; or any
20 certificate of deposit for any of the foregoing.

21 (c) Any security issued or guaranteed by and representing an
22 interest in or a direct obligation of a national bank or a bank or
23 trust company incorporated under the laws of this state, and any
24 security issued by a bank to one or more other banks and
25 representing an interest in an asset of the issuing bank.

26 (d) Any security issued or guaranteed by a federal savings
27 association or federal savings bank or federal land bank or joint
28 land bank or national farm loan association or by any savings
29 association, as defined in subdivision (a) of Section 5102 of the
30 Financial Code, which is subject to the supervision and regulation
31 of the Commissioner of Financial Institutions of this state.

32 (e) Any security (other than an interest in all or portions of a
33 parcel or parcels of real property which are subdivided land or a
34 subdivision or in a real estate development), the issuance of which
35 is subject to authorization by the Insurance Commissioner, the
36 Public Utilities Commission, or the ~~Real Estate~~ Commissioner of
37 *Financial Services* of this state.

38 (f) Any security consisting of any interest in all or portions of
39 a parcel or parcels of real property which are subdivided lands or
40 a subdivision or in a real estate development; provided that the

1 exemption in this subdivision shall not be applicable to: (1) any
2 investment contract sold or offered for sale with, or as part of, that
3 interest, or (2) any person engaged in the business of selling,
4 distributing, or supplying water for irrigation purposes or domestic
5 use that is not a public utility except that the exemption is
6 applicable to any security of a mutual water company (other than
7 an investment contract as described in paragraph (1)) offered or
8 sold in connection with subdivided lands pursuant to Chapter 2
9 (commencing with Section 14310) of Part 7 of Division 3 of Title
10 1.

11 (g) Any mutual capital certificates or savings accounts, as
12 defined in the Savings Association Law, issued by a savings
13 association, as defined by subdivision (a) of Section 5102 of the
14 Financial Code, and holding a license or certificate of authority
15 then in force from the Commissioner of Financial Institutions of
16 this state.

17 (h) Any security issued or guaranteed by any federal credit
18 union, or by any credit union organized and supervised, or
19 regulated, under the Credit Union Law.

20 (i) Any security issued or guaranteed by any railroad, other
21 common carrier, public utility, or public utility holding company
22 which is (1) subject to the jurisdiction of the Interstate Commerce
23 Commission or its successor or (2) a holding company registered
24 with the Securities and Exchange Commission under the Public
25 Utility Holding Company Act of 1935 or a subsidiary of that
26 company within the meaning of that act or (3) regulated in respect
27 of the issuance or guarantee of the security by a governmental
28 authority of the United States, of any state, of Canada or of any
29 Canadian province; and the security is subject to registration with
30 or authorization of issuance by that authority.

31 (j) Any security (except evidences of indebtedness, whether
32 interest bearing or not) of an issuer (1) organized exclusively for
33 educational, benevolent, fraternal, religious, charitable, social, or
34 reformatory purposes and not for pecuniary profit, if no part of the
35 net earnings of the issuer inures to the benefit of any private
36 shareholder or individual, or (2) organized as a chamber of
37 commerce or trade or professional association. The fact that
38 amounts received from memberships or dues or both will or may
39 be used to construct or otherwise acquire facilities for use by
40 members of the nonprofit organization does not disqualify the

1 organization for this exemption. This exemption does not apply
2 to the securities of any nonprofit organization if any promoter
3 thereof expects or intends to make a profit directly or indirectly
4 from any business or activity associated with the organization or
5 operation of that nonprofit organization or from remuneration
6 received from that nonprofit organization.

7 (k) Any agreement, commonly known as a “life income
8 contract,” of an issuer (1) organized exclusively for educational,
9 benevolent, fraternal, religious, charitable, social, or reformatory
10 purposes and not for pecuniary profit and (2) which the
11 commissioner designates by rule or order, with a donor in
12 consideration of a donation of property to that issuer and providing
13 for the payment to the donor or persons designated by him or her
14 of income or specified periodic payments from the donated
15 property or other property for the life of the donor or those other
16 persons.

17 (l) Any note, draft, bill of exchange, or banker’s acceptance
18 which is freely transferable and of prime quality, arises out of a
19 current transaction or the proceeds of which have been or are to
20 be used for current transactions, and which evidences an obligation
21 to pay cash within nine months of the date of issuance, exclusive
22 of days of grace, or any renewal of that paper which is likewise
23 limited, or any guarantee of that paper or of that renewal, provided
24 that the paper is not offered to the public in amounts of less than
25 twenty-five thousand dollars (\$25,000) in the aggregate to any one
26 purchaser. In addition, the commissioner may, by rule or order,
27 exempt any issuer of any notes, drafts, bills of exchange or banker’s
28 acceptances from qualification of those securities when the
29 commissioner finds that the qualification is not necessary or
30 appropriate in the public interest or for the protection of investors.

31 (m) Any security issued by any corporation organized and
32 existing under the provisions of Chapter 1 (commencing with
33 Section 54001) of Division 20 of the Food and Agricultural Code.

34 (n) Any beneficial interest in an employees’ pension,
35 profit-sharing, stock bonus or similar benefit plan which meets the
36 requirements for qualification under Section 401 of the federal
37 Internal Revenue Code or any statute amendatory thereof or
38 supplementary thereto. A determination letter from the Internal
39 Revenue Service stating that an employees’ pension, profit-sharing,
40 stock bonus or similar benefit plan meets those requirements shall

1 be conclusive evidence that the plan is an employees' pension,
2 profit-sharing, stock bonus or similar benefit plan within the
3 meaning of the first sentence of this subdivision until the date the
4 determination letter is revoked in writing by the Internal Revenue
5 Service, regardless of whether or not the revocation is retroactive.

6 (o) Any security listed or approved for listing upon notice of
7 issuance on a national securities exchange or on the National
8 Market System of the Nasdaq Stock Market (or any successor to
9 that entity), if the exchange or Nasdaq Stock Market (or its
10 successor) has been certified by rule or order of the commissioner
11 and any warrant or right to purchase or subscribe to the security.
12 The exemption afforded by this subdivision does not apply to
13 securities listed or approved for listing upon notice of issuance on
14 a national securities exchange or on the National Market System
15 of the Nasdaq Stock Market (or its successor), in a rollup
16 transaction unless the rollup transaction is an eligible rollup
17 transaction as defined in Section 25014.7.

18 That certification of any exchange or the Nasdaq Stock Market
19 (or its successor) shall be made by the commissioner upon the
20 written request of the exchange or Nasdaq Stock Market (or its
21 successor) if the commissioner finds that the exchange or Nasdaq
22 Stock Market (or its successor): (i) in acting on applications for
23 listing of common stock substantially applies the minimum
24 standards set forth in either alternative (A) or (B) of paragraph (1),
25 and (ii) in considering suspension or removal from listing,
26 substantially applies each of the criteria set forth in paragraph (2).

27 (1) Listing standards:

28 (A) (i) Shareholders' equity of at least four million dollars
29 (\$4,000,000).

30 (ii) Pretax income of at least seven hundred fifty thousand
31 dollars (\$750,000) in the issuer's last fiscal year or in two of its
32 last three fiscal years.

33 (iii) Minimum public distribution of 500,000 shares (exclusive
34 of the holdings of officers, directors, controlling shareholders, and
35 other concentrated or family holdings), together with a minimum
36 of 800 public holders or minimum public distribution of 1,000,000
37 shares together with a minimum of 400 public holders. The
38 exchange or Nasdaq Stock Market (or its successor) may also
39 consider the listing of a company's securities if the company has
40 a minimum of 500,000 shares publicly held, a minimum of 400

shareholders and daily trading volume in the issue has been approximately 2,000 shares or more for the six months preceding the date of application. In evaluating the suitability of an issue for listing under this trading provision, the exchange or Nasdaq Stock Market (or its successor) shall review the nature and frequency of that activity and any other factors as it may determine to be relevant in ascertaining whether the issue is suitable for trading. A security that trades infrequently shall not be considered for listing under this paragraph even though average daily volume amounts to 2,000 shares per day or more.

Companies whose securities are concentrated in a limited geographical area, or whose securities are largely held in block by institutional investors, normally may not be considered eligible for listing unless the public distribution appreciably exceeds 500,000 shares.

(iv) Minimum price of three dollars (\$3) per share for a reasonable period of time prior to the filing of a listing application; provided, however, in certain instances an exchange or Nasdaq Stock Market (or its successor) may favorably consider listing an issue selling for less than three dollars (\$3) per share after considering all pertinent factors, including market conditions in general, whether historically the issue has sold above three dollars (\$3) per share, the applicant's capitalization, and the number of outstanding and publicly held shares of the issue.

(v) An aggregate market value for publicly held shares of at least three million dollars (\$3,000,000).

(B) (i) Shareholders' equity of at least four million dollars (\$4,000,000).

(ii) Minimum public distribution set forth in clause (iii) of subparagraph (A) of paragraph (1).

(iii) Operating history of at least three years.

(iv) An aggregate market value for publicly held shares of at least fifteen million dollars (\$15,000,000).

(2) Criteria for consideration of suspension or removal from listing:

(i) If a company that (A) has shareholders' equity of less than one million dollars (\$1,000,000) has sustained net losses in each of its two most recent fiscal years, or (B) has net tangible assets of less than three million dollars (\$3,000,000) and has sustained net losses in three of its four most recent fiscal years.

1 (ii) If the number of shares publicly held (excluding the holdings
2 of officers, directors, controlling shareholders and other
3 concentrated or family holdings) is less than 150,000.

4 (iii) If the total number of shareholders is less than 400 or if the
5 number of shareholders of lots of 100 shares or more is less than
6 300.

7 (iv) If the aggregate market value of shares publicly held is less
8 than seven hundred fifty thousand dollars (\$750,000).

9 (v) If shares of common stock sell at a price of less than three
10 dollars (\$3) per share for a substantial period of time and the issuer
11 shall fail to effectuate a reverse stock split of the shares within a
12 reasonable period of time after being requested by the exchange
13 to take that action.

14 A national securities exchange or Nasdaq Stock Market (or its
15 successor), certified by rule or order of the commissioner under
16 this subdivision, shall file annual reports when requested to do so
17 by the commissioner. The annual reports shall contain, by issuer:
18 the variances granted to an exchange's listing standards or Nasdaq
19 Stock Market's (or its successor) criteria, including variances from
20 corporate governance and voting rights' standards, for any security
21 of that issuer; the reasons for the variances; a discussion of the
22 review procedure instituted by the exchange or Nasdaq Stock
23 Market (or its successor) to determine the effect of the variances
24 on investors and whether the variances should be continued; and
25 any other information that the commissioner deems relevant. The
26 purpose of these reports is to assist the commissioner in
27 determining whether the quantitative and qualitative requirements
28 of this subdivision are substantially being met by the exchange in
29 general or with regard to any particular security.

30 The commissioner after appropriate notice and opportunity for
31 hearing in accordance with the provisions of the Administrative
32 Procedure Act, Chapter 5 (commencing with Section 11500) of
33 Part 1 of Division 3 of Title 2 of the Government Code, may, in
34 his or her discretion, by rule or order, decertify any exchange or
35 Nasdaq Stock Market (or its successor) previously certified that
36 ceases substantially to apply the minimum standards or criteria as
37 set forth in paragraphs (1) and (2).

38 A rule or order of certification shall conclusively establish that
39 any security listed or approved for listing upon notice of issuance
40 on any exchange, or listed on the National Market System of the

1 Nasdaq Stock Market (or its successor), named in a rule or order
2 of certification, and any warrant or right to purchase or subscribe
3 to that security, is exempt under this subdivision until the adoption
4 by the commissioner of any rule or order decertifying the exchange
5 or the Nasdaq Stock Market (or its successor).

6 (p) A promissory note secured by a lien on real property, which
7 is neither one of a series of notes of equal priority secured by
8 interests in the same real property nor a note in which beneficial
9 interests are sold to more than one person or entity.

10 (q) Any unincorporated interindemnity or reciprocal or
11 interinsurance contract, that qualifies under the provisions of
12 Section 1280.7 of the Insurance Code, between members of a
13 cooperative corporation, organized and operating under Part 2
14 (commencing with Section 12200) of Division 3 of Title 1, and
15 whose members consist only of physicians and surgeons licensed
16 in California, which contracts indemnify solely in respect to
17 medical malpractice claims against the members, and which do
18 not collect in advance of loss any moneys other than contributions
19 by each member to a collective reserve trust fund or for necessary
20 expenses of administration.

21 (1) Whenever it appears to the commissioner that any person
22 has engaged or is about to engage in any act or practice constituting
23 a violation of any provision of Section 1280.7 of the Insurance
24 Code, the commissioner may, in the commissioner's discretion,
25 bring an action in the name of the people of the State of California
26 in the superior court to enjoin the acts or practices or to enforce
27 compliance with Section 1280.7 of the Insurance Code. Upon a
28 proper showing a permanent or preliminary injunction, a restraining
29 order, or a writ of mandate shall be granted and a receiver or
30 conservator may be appointed for the defendant or the defendant's
31 assets.

32 (2) The commissioner may, in the commissioner's discretion,
33 (A) make public or private investigations within or outside of this
34 state as the commissioner deems necessary to determine whether
35 any person has violated or is about to violate any provision of
36 Section 1280.7 of the Insurance Code or to aid in the enforcement
37 of Section 1280.7, and (B) publish information concerning the
38 violation of Section 1280.7.

39 (3) For the purpose of any investigation or proceeding under
40 this section, the commissioner or any officer designated by the

1 commissioner may administer oaths and affirmations, subpoena
2 witnesses, compel their attendance, take evidence, and require the
3 production of any books, papers, correspondence, memoranda,
4 agreements, or other documents or records which the commissioner
5 deems relevant or material to the inquiry.

6 (4) In case of contumacy by, or refusal to obey a subpoena
7 issued to, any person, the superior court, upon application by the
8 commissioner, may issue to the person an order requiring the
9 person to appear before the commissioner, or the officer designated
10 by the commissioner, to produce documentary evidence, if so
11 ordered, or to give evidence touching the matter under investigation
12 or in question. Failure to obey the order of the court may be
13 punished by the court as a contempt.

14 (5) No person is excused from attending or testifying or from
15 producing any document or record before the commissioner or in
16 obedience to the subpoena of the commissioner or any officer
17 designated by the commissioner, or in any proceeding instituted
18 by the commissioner, on the ground that the testimony or evidence
19 (documentary or otherwise), required of the person may tend to
20 incriminate the person or subject the person to a penalty or
21 forfeiture, but no individual may be prosecuted or subjected to any
22 penalty or forfeiture for or on account of any transaction, matter,
23 or thing concerning which the person is compelled, after validly
24 claiming the privilege against self-incrimination, to testify or
25 produce evidence (documentary or otherwise), except that the
26 individual testifying is not exempt from prosecution and
27 punishment for perjury or contempt committed in testifying.

28 (6) The cost of any review, examination, audit, or investigation
29 made by the commissioner under Section 1280.7 of the Insurance
30 Code shall be paid to the commissioner by the person subject to
31 the review, examination, audit, or investigation, and the
32 commissioner may maintain an action for the recovery of these
33 costs in any court of competent jurisdiction. In determining the
34 cost, the commissioner may use the actual amount of the salary or
35 other compensation paid to the persons making the review,
36 examination, audit, or investigation plus the actual amount of
37 expenses including overhead reasonably incurred in the
38 performance of the work.

39 The recoverable cost of each review, examination, audit, or
40 investigation made by the commissioner under Section 1280.7 of

1 the Insurance Code shall not exceed twenty-five thousand dollars
2 (\$25,000), except that costs exceeding twenty-five thousand dollars
3 (\$25,000) shall be recoverable if the costs are necessary to prevent
4 a violation of any provision of Section 1280.7 of the Insurance
5 Code.

6 (r) Any shares or memberships issued by any corporation
7 organized and existing pursuant to the provisions of Part 2
8 (commencing with Section 12200) of Division 3 of Title 1,
9 provided the aggregate investment of any shareholder or member
10 in shares or memberships sold pursuant to this subdivision does
11 not exceed three hundred dollars (\$300). This exemption does not
12 apply to the shares or memberships of that corporation if any
13 promoter thereof expects or intends to make a profit directly or
14 indirectly from any business or activity associated with the
15 corporation or the operation of the corporation or from
16 remuneration, other than reasonable salary, received from the
17 corporation. This exemption does not apply to nonvoting shares
18 or memberships of that corporation issued to any person who does
19 not possess, and who will not acquire in connection with the
20 issuance of nonvoting shares or memberships, voting power
21 (Section 12253) in the corporation. This exemption also does not
22 apply to shares or memberships issued by a nonprofit cooperative
23 corporation organized to facilitate the creation of an unincorporated
24 interindemnity arrangement that provides indemnification for
25 medical malpractice to its physician and surgeon members as set
26 forth in subdivision (q).

27 (s) Any security consisting of or representing an interest in a
28 pool of mortgage loans that meets each of the following
29 requirements:

30 (1) The pool consists of whole mortgage loans or participation
31 interests in those loans, which loans were originated or acquired
32 in the ordinary course of business by a national bank or federal
33 savings association or federal savings bank having its principal
34 office in this state, by a bank incorporated under the laws of this
35 state or by a savings association as defined in subdivision (a) of
36 Section 5102 of the Financial Code and which is subject to the
37 supervision and regulation of the Commissioner of Financial
38 Institutions, and each of which at the time of transfer to the pool
39 is an authorized investment for the originating or acquiring
40 institution.

(2) The pool of mortgage loans is held in trust by a trustee which is a financial institution specified in paragraph (1) as trustee or otherwise.

(3) The loans are serviced by a financial institution specified in paragraph (1).

(4) The security is not offered in amounts of less than twenty-five thousand dollars (\$25,000) in the aggregate to any one purchaser.

(5) The security is offered pursuant to a registration under the Securities Act of 1933, or pursuant to an exemption under Regulation A under that act, or in the opinion of counsel for the issuer, is offered pursuant to an exemption under Section 4(2) of that act.

(t) (1) Any security issued or guaranteed by and representing an interest in or a direct obligation of an industrial loan company incorporated under the laws of the state and authorized by the Commissioner of Financial-Institutions *Services* to engage in industrial loan business.

(2) Any investment certificate in or issued by any industrial loan company that is organized under the laws of a state of the United States other than this state, that is insured by the Federal Deposit Insurance Corporation, and that maintains a branch office in this state.

SEC. 124. Section 25102 of the Corporations Code is amended to read:

25102. The following transactions are exempted from the provisions of Section 25110:

(a) Any offer (but not a sale) not involving any public offering and the execution and delivery of any agreement for the sale of securities pursuant to the offer if (1) the agreement contains substantially the following provision: “The sale of the securities that are the subject of this agreement has not been qualified with the Commissioner of ~~Corporations~~ *Financial Services* of the State of California and the issuance of the securities or the payment or receipt of any part of the consideration therefor prior to the qualification is unlawful, unless the sale of securities is exempt from the qualification by Section 25100, 25102, or 25105 of the California Corporations Code. The rights of all parties to this agreement are expressly conditioned upon the qualification being obtained, unless the sale is so exempt”; and (2) no part of the

1 purchase price is paid or received and none of the securities are
2 issued until the sale of the securities is qualified under this law
3 unless the sale of securities is exempt from the qualification by
4 this section, Section 25100, or 25105.

5 (b) Any offer (but not a sale) of a security for which a
6 registration statement has been filed under the Securities Act of
7 1933 but has not yet become effective, or for which an offering
8 statement under Regulation A has been filed but has not yet been
9 qualified, if no stop order or refusal order is in effect and no public
10 proceeding or examination looking towards an order is pending
11 under Section 8 of the act and no order under Section 25140 or
12 subdivision (a) of Section 25143 is in effect under this law.

13 (c) Any offer (but not a sale) and the execution and delivery of
14 any agreement for the sale of securities pursuant to the offer as
15 may be permitted by the commissioner upon application. Any
16 negotiating permit under this subdivision shall be conditioned to
17 the effect that none of the securities may be issued and none of
18 the consideration therefor may be received or accepted until the
19 sale of the securities is qualified under this law.

20 (d) Any transaction or agreement between the issuer and an
21 underwriter or among underwriters if the sale of the securities is
22 qualified, or exempt from qualification, at the time of distribution
23 thereof in this state, if any.

24 (e) Any offer or sale of any evidence of indebtedness, whether
25 secured or unsecured, and any guarantee thereof, in a transaction
26 not involving any public offering.

27 (f) Any offer or sale of any security in a transaction (other than
28 an offer or sale to a pension or profit-sharing trust of the issuer)
29 that meets each of the following criteria:

30 (1) Sales of the security are not made to more than 35 persons,
31 including persons not in this state.

32 (2) All purchasers either have a preexisting personal or business
33 relationship with the offeror or any of its partners, officers,
34 directors or controlling persons, or managers (as appointed or
35 elected by the members) if the offeror is a limited liability
36 company, or by reason of their business or financial experience or
37 the business or financial experience of their professional advisers
38 who are unaffiliated with and who are not compensated by the
39 issuer or any affiliate or selling agent of the issuer, directly or

1 indirectly, could be reasonably assumed to have the capacity to
2 protect their own interests in connection with the transaction.

3 (3) Each purchaser represents that the purchaser is purchasing
4 for the purchaser's own account (or a trust account if the purchaser
5 is a trustee) and not with a view to or for sale in connection with
6 any distribution of the security.

7 (4) The offer and sale of the security is not accomplished by
8 the publication of any advertisement. The number of purchasers
9 referred to above is exclusive of any described in subdivision (i),
10 any officer, director, or affiliate of the issuer, or manager (as
11 appointed or elected by the members) if the issuer is a limited
12 liability company, and any other purchaser who the commissioner
13 designates by rule. For purposes of this section, a husband and
14 wife (together with any custodian or trustee acting for the account
15 of their minor children) are counted as one person and a
16 partnership, corporation, or other organization that was not
17 specifically formed for the purpose of purchasing the security
18 offered in reliance upon this exemption, is counted as one person.
19 The commissioner may by rule require the issuer to file a notice
20 of transactions under this subdivision.

21 The failure to file the notice or the failure to file the notice within
22 the time specified by the rule of the commissioner shall not affect
23 the availability of this exemption. An issuer who fails to file the
24 notice as provided by rule of the commissioner shall, within 15
25 business days after discovery of the failure to file the notice or
26 after demand by the commissioner, whichever occurs first, file the
27 notice and pay to the commissioner a fee equal to the fee payable
28 had the transaction been qualified under Section 25110.

29 (g) Any offer or sale of conditional sale agreements, equipment
30 trust certificates, or certificates of interest or participation therein
31 or partial assignments thereof, covering the purchase of railroad
32 rolling stock or equipment or the purchase of motor vehicles,
33 aircraft, or parts thereof, in a transaction not involving any public
34 offering.

35 (h) Any offer or sale of voting common stock by a corporation
36 incorporated in any state if, immediately after the proposed sale
37 and issuance, there will be only one class of stock of the
38 corporation outstanding that is owned beneficially by no more than
39 35 persons, provided all of the following requirements have been
40 met:

1 (1) The offer and sale of the stock is not accompanied by the
2 publication of any advertisement, and no selling expenses have
3 been given, paid, or incurred in connection therewith.

4 (2) The consideration to be received by the issuer for the stock
5 to be issued consists of any of the following:

6 (A) Only assets (which may include cash) of an existing business
7 enterprise transferred to the issuer upon its initial organization, of
8 which all of the persons who are to receive the stock to be issued
9 pursuant to this exemption were owners during, and the enterprise
10 was operated for, a period of not less than one year immediately
11 preceding the proposed issuance, and the ownership of the
12 enterprise immediately prior to the proposed issuance was in the
13 same proportions as the shares of stock are to be issued.

14 (B) Only cash or cancellation of indebtedness for money
15 borrowed, or both, upon the initial organization of the issuer,
16 provided all of the stock is issued for the same price per share.

17 (C) Only cash, provided the sale is approved in writing by each
18 of the existing shareholders and the purchaser or purchasers are
19 existing shareholders.

20 (D) In a case where after the proposed issuance there will be
21 only one owner of the stock of the issuer, only any legal
22 consideration.

23 (3) No promotional consideration has been given, paid, or
24 incurred in connection with the issuance. Promotional consideration
25 means any consideration paid directly or indirectly to a person
26 who, acting alone or in conjunction with one or more other persons,
27 takes the initiative in founding and organizing the business or
28 enterprise of an issuer for services rendered in connection with the
29 founding or organizing.

30 (4) A notice in a form prescribed by rule of the commissioner,
31 signed by an active member of the State Bar of California, is filed
32 with or mailed for filing to the commissioner not later than 10
33 business days after receipt of consideration for the securities by
34 the issuer. That notice shall contain an opinion of the member of
35 the State Bar of California that the exemption provided by this
36 subdivision is available for the offer and sale of the securities. The
37 failure to file the notice as required by this subdivision and the
38 rules of the commissioner shall not affect the availability of this
39 exemption. An issuer who fails to file the notice within the time
40 specified by this subdivision shall, within 15 business days after

1 discovery of the failure to file the notice or after demand by the
2 commissioner, whichever occurs first, file the notice and pay to
3 the commissioner a fee equal to the fee payable had the transaction
4 been qualified under Section 25110. The notice, except when filed
5 on behalf of a California corporation, shall be accompanied by an
6 irrevocable consent, in the form that the commissioner by rule
7 prescribes, appointing the commissioner or his or her successor in
8 office to be the issuer's attorney to receive service of any lawful
9 process in any noncriminal suit, action, or proceeding against it
10 or its successor that arises under this law or any rule or order
11 hereunder after the consent has been filed, with the same force and
12 validity as if served personally on the issuer. An issuer on whose
13 behalf a consent has been filed in connection with a previous
14 qualification or exemption from qualification under this law (or
15 application for a permit under any prior law if the application or
16 notice under this law states that the consent is still effective) need
17 not file another. Service may be made by leaving a copy of the
18 process in the office of the commissioner, but it is not effective
19 unless (A) the plaintiff, who may be the commissioner in a suit,
20 action, or proceeding instituted by him or her, forthwith sends
21 notice of the service and a copy of the process by registered or
22 certified mail to the defendant or respondent at its last address on
23 file with the commissioner, and (B) the plaintiff's affidavit of
24 compliance with this section is filed in the case on or before the
25 return day of the process, if any, or within the further time as the
26 court allows.

27 (5) Each purchaser represents that the purchaser is purchasing
28 for the purchaser's own account, or a trust account if the purchaser
29 is a trustee, and not with a view to or for sale in connection with
30 any distribution of the stock.

31 For the purposes of this subdivision, all securities held by a
32 husband and wife, whether or not jointly, shall be considered to
33 be owned by one person, and all securities held by a corporation
34 that has issued stock pursuant to this exemption shall be considered
35 to be held by the shareholders to whom it has issued the stock.

36 All stock issued by a corporation pursuant to this subdivision as
37 it existed prior to the effective date of the amendments to this
38 section made during the 1996 portion of the 1995–96 Regular
39 Session that required the issuer to have stamped or printed
40 prominently on the face of the stock certificate a legend in a form

prescribed by rule of the commissioner restricting transfer of the stock in a manner provided for by that rule shall not be subject to the transfer restriction legend requirement and, by operation of law, the corporation is authorized to remove that transfer restriction legend from the certificates of those shares of stock issued by the corporation pursuant to this subdivision as it existed prior to the effective date of the amendments to this section made during the 1996 portion of the 1995–96 Regular Session.

(i) Any offer or sale (1) to a bank, savings and loan association, trust company, insurance company, investment company registered under the Investment Company Act of 1940, pension or profit-sharing trust (other than a pension or profit-sharing trust of the issuer, a self-employed individual retirement plan, or individual retirement account), or other institutional investor or governmental agency or instrumentality that the commissioner may designate by rule, whether the purchaser is acting for itself or as trustee, or (2) to any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of the corporation that after the offer and sale will own directly or indirectly 100 percent of the outstanding capital stock of the issuer, provided the purchaser represents that it is purchasing for its own account (or for the trust account) for investment and not with a view to or for sale in connection with any distribution of the security.

(j) Any offer or sale of any certificate of interest or participation in an oil or gas title or lease (including subsurface gas storage and payments out of production) if either of the following apply:

(1) All of the purchasers meet one of the following requirements:

(A) Are and have been during the preceding two years engaged primarily in the business of drilling for, producing, or refining oil or gas (or whose corporate predecessor, in the case of a corporation, has been so engaged).

(B) Are persons described in paragraph (1) of subdivision (i).

(C) Have been found by the commissioner upon written application to be substantially engaged in the business of drilling for, producing, or refining oil or gas so as not to require the protection provided by this law (which finding shall be effective until rescinded).

(2) The security is concurrently hypothecated to a bank in the ordinary course of business to secure a loan made by the bank,

1 provided that each purchaser represents that it is purchasing for
2 its own account for investment and not with a view to or for sale
3 in connection with any distribution of the security.

4 (k) Any offer or sale of any security under, or pursuant to, a
5 plan of reorganization under Chapter 11 of the federal bankruptcy
6 law that has been confirmed or is subject to confirmation by the
7 decree or order of a court of competent jurisdiction.

8 (l) Any offer or sale of an option, warrant, put, call, or straddle,
9 and any guarantee of any of these securities, by a person who is
10 not the issuer of the security subject to the right, if the transaction,
11 had it involved an offer or sale of the security subject to the right
12 by the person, would not have violated Section 25110 or 25130.

13 (m) Any offer or sale of a stock to a pension, profit-sharing,
14 stock bonus, or employee stock ownership plan, provided that (1)
15 the plan meets the requirements for qualification under Section
16 401 of the Internal Revenue Code, and (2) the employees are not
17 required or permitted individually to make any contributions to
18 the plan. The exemption provided by this subdivision shall not be
19 affected by whether the stock is contributed to the plan, purchased
20 from the issuer with contributions by the issuer or an affiliate of
21 the issuer, or purchased from the issuer with funds borrowed from
22 the issuer, an affiliate of the issuer, or any other lender.

23 (n) Any offer or sale of any security in a transaction, other than
24 an offer or sale of a security in a rollup transaction, that meets all
25 of the following criteria:

26 (1) The issuer is (A) a California corporation or foreign
27 corporation that, at the time of the filing of the notice required
28 under this subdivision, is subject to Section 2115, or (B) any other
29 form of business entity, including without limitation a partnership
30 or trust organized under the laws of this state. The exemption
31 provided by this subdivision is not available to a “blind pool”
32 issuer, as that term is defined by the commissioner, or to an
33 investment company subject to the Investment Company Act of
34 1940.

35 (2) Sales of securities are made only to qualified purchasers or
36 other persons the issuer reasonably believes, after reasonable
37 inquiry, to be qualified purchasers. A corporation, partnership, or
38 other organization specifically formed for the purpose of acquiring
39 the securities offered by the issuer in reliance upon this exemption
40 may be a qualified purchaser if each of the equity owners of the

1 corporation, partnership, or other organization is a qualified
2 purchaser. Qualified purchasers include the following:

3 (A) A person designated in Section 260.102.13 of Title 10 of
4 the California Code of Regulations.

5 (B) A person designated in subdivision (i) or any rule of the
6 commissioner adopted thereunder.

7 (C) A pension or profit-sharing trust of the issuer, a
8 self-employed individual retirement plan, or an individual
9 retirement account, if the investment decisions made on behalf of
10 the trust, plan, or account are made solely by persons who are
11 qualified purchasers.

12 (D) An organization described in Section 501(c)(3) of the
13 Internal Revenue Code, corporation, Massachusetts or similar
14 business trust, or partnership, each with total assets in excess of
15 five million dollars (\$5,000,000) according to its most recent
16 audited financial statements.

17 (E) With respect to the offer and sale of one class of voting
18 common stock of an issuer or of preferred stock of an issuer
19 entitling the holder thereof to at least the same voting rights as the
20 issuer's one class of voting common stock, provided that the issuer
21 has only one-class voting common stock outstanding upon
22 consummation of the offer and sale, a natural person who, either
23 individually or jointly with the person's spouse, (i) has a minimum
24 net worth of two hundred fifty thousand dollars (\$250,000) and
25 had, during the immediately preceding tax year, gross income in
26 excess of one hundred thousand dollars (\$100,000) and reasonably
27 expects gross income in excess of one hundred thousand dollars
28 (\$100,000) during the current tax year or (ii) has a minimum net
29 worth of five hundred thousand dollars (\$500,000). "Net worth"
30 shall be determined exclusive of home, home furnishings, and
31 automobiles. Other assets included in the computation of net worth
32 may be valued at fair market value.

33 Each natural person specified above, by reason of his or her
34 business or financial experience, or the business or financial
35 experience of his or her professional adviser, who is unaffiliated
36 with and who is not compensated, directly or indirectly, by the
37 issuer or any affiliate or selling agent of the issuer, can be
38 reasonably assumed to have the capacity to protect his or her
39 interests in connection with the transaction. The amount of the
40 investment of each natural person shall not exceed 10 percent of

1 the net worth, as determined by this subparagraph, of that natural
2 person.

3 (F) Any other purchaser designated as qualified by rule of the
4 commissioner.

5 (3) Each purchaser represents that the purchaser is purchasing
6 for the purchaser's own account (or trust account, if the purchaser
7 is a trustee) and not with a view to or for sale in connection with
8 a distribution of the security.

9 (4) Each natural person purchaser, including a corporation,
10 partnership, or other organization specifically formed by natural
11 persons for the purpose of acquiring the securities offered by the
12 issuer, receives, at least five business days before securities are
13 sold to, or a commitment to purchase is accepted from, the
14 purchaser, a written offering disclosure statement that shall meet
15 the disclosure requirements of Regulation D (17 C.F.R. 230.501
16 et seq.), and any other information as may be prescribed by rule
17 of the commissioner, provided that the issuer shall not be obligated
18 pursuant to this paragraph to provide this disclosure statement to
19 a natural person qualified under Section 260.102.13 of Title 10 of
20 the California Code of Regulations. The offer or sale of securities
21 pursuant to a disclosure statement required by this paragraph that
22 is in violation of Section 25401, or that fails to meet the disclosure
23 requirements of Regulation D (17 C.F.R. 230.501 et seq.), shall
24 not render unavailable to the issuer the claim of an exemption from
25 Section 25110 afforded by this subdivision. This paragraph does
26 not impose, directly or indirectly, any additional disclosure
27 obligation with respect to any other exemption from qualification
28 available under any other provision of this section.

29 (5) (A) A general announcement of proposed offering may be
30 published by written document only, provided that the general
31 announcement of proposed offering sets forth the following
32 required information:

33 (i) The name of the issuer of the securities.

34 (ii) The full title of the security to be issued.

35 (iii) The anticipated suitability standards for prospective
36 purchasers.

37 (iv) A statement that (I) no money or other consideration is
38 being solicited or will be accepted, (II) an indication of interest
39 made by a prospective purchaser involves no obligation or
40 commitment of any kind, and, if the issuer is required by paragraph

1 (4) to deliver a disclosure statement to prospective purchasers,
2 (III) no sales will be made or commitment to purchase accepted
3 until five business days after delivery of a disclosure statement
4 and subscription information to the prospective purchaser in
5 accordance with the requirements of this subdivision.

6 (v) Any other information required by rule of the commissioner.

7 (vi) The following legend: "For more complete information
8 about (Name of Issuer) and (Full Title of Security), send for
9 additional information from (Name and Address) by sending this
10 coupon or calling (Telephone Number)."

11 (B) The general announcement of proposed offering referred
12 to in subparagraph (A) may also set forth the following
13 information:

14 (i) A brief description of the business of the issuer.

15 (ii) The geographic location of the issuer and its business.

16 (iii) The price of the security to be issued, or, if the price is not
17 known, the method of its determination or the probable price range
18 as specified by the issuer, and the aggregate offering price.

19 (C) The general announcement of proposed offering shall
20 contain only the information that is set forth in this paragraph.

21 (D) Dissemination of the general announcement of proposed
22 offering to persons who are not qualified purchasers, without more,
23 shall not disqualify the issuer from claiming the exemption under
24 this subdivision.

25 (6) No telephone solicitation shall be permitted until the issuer
26 has determined that the prospective purchaser to be solicited is a
27 qualified purchaser.

28 (7) The issuer files a notice of transaction under this subdivision
29 both (A) concurrent with the publication of a general announcement
30 of proposed offering or at the time of the initial offer of the
31 securities, whichever occurs first, accompanied by a filing fee, and
32 (B) within 10 business days following the close or abandonment
33 of the offering, but in no case more than 210 days from the date
34 of filing the first notice. The first notice of transaction under
35 subparagraph (A) shall contain an undertaking, in a form acceptable
36 to the commissioner, to deliver any disclosure statement required
37 by paragraph (4) to be delivered to prospective purchasers, and
38 any supplement thereto, to the commissioner within 10 days of
39 the commissioner's request for the information. The exemption
40 from qualification afforded by this subdivision is unavailable if

1 an issuer fails to file the first notice required under subparagraph
2 (A) or to pay the filing fee. The commissioner has the authority
3 to assess an administrative penalty of up to one thousand dollars
4 (\$1,000) against an issuer that fails to deliver the disclosure
5 statement required to be delivered to the commissioner upon the
6 commissioner's request within the time period set forth above.
7 Neither the filing of the disclosure statement nor the failure by the
8 commissioner to comment thereon precludes the commissioner
9 from taking any action deemed necessary or appropriate under this
10 division with respect to the offer and sale of the securities.

11 (o) An offer or sale of any security issued by a corporation or
12 limited liability company pursuant to a purchase plan or agreement,
13 or issued pursuant to an option plan or agreement, where the
14 security at the time of issuance or grant is exempt from registration
15 under the Securities Act of 1933, as amended, pursuant to Rule
16 701 adopted pursuant to that act (17 C.F.R. 230.701), the provisions
17 of which are hereby incorporated by reference into this section,
18 provided that (1) the terms of any purchase plan or agreement shall
19 comply with Sections 260.140.42, 260.140.45, and 260.140.46 of
20 Title 10 of the California Code of Regulations, (2) the terms of
21 any option plan or agreement shall comply with Sections
22 260.140.41, 260.140.45, and 260.140.46 of Title 10 of the
23 California Code of Regulations, and (3) the issuer files a notice of
24 transaction in accordance with rules adopted by the commissioner
25 no later than 30 days after the initial issuance of any security under
26 that plan, accompanied by a filing fee as prescribed by subdivision
27 (y) of Section 25608. The failure to file the notice of transaction
28 within the time specified in this subdivision shall not affect the
29 availability of this exemption. An issuer that fails to file the notice
30 shall, within 15 business days after discovery of the failure to file
31 the notice or after demand by the commissioner, whichever occurs
32 first, file the notice and pay the commissioner a fee equal to the
33 maximum aggregate fee payable had the transaction been qualified
34 under Section 25110.

35 Offers and sales exempt pursuant to this subdivision shall be
36 deemed to be part of a single, discrete offering and are not subject
37 to integration with any other offering or sale, whether qualified
38 under Chapter 2 (commencing with Section 25110), or otherwise
39 exempt, or not subject to qualification.

1 (p) An offer or sale of nonredeemable securities to accredited
2 investors (Section 28031) by a person licensed under the Capital
3 Access Company Law (Division 3 (commencing with Section
4 28000) of Title 4). All nonredeemable securities shall be evidenced
5 by certificates that shall have stamped or printed prominently on
6 their face a legend in a form to be prescribed by rule or order of
7 the commissioner restricting transfer of the securities in the manner
8 as the rule or order provides.

9 (q) Any offer or sale of any viatical or life settlement contract
10 or fractionalized or pooled interest therein in a transaction that
11 meets all of the following criteria:

12 (1) Sales of securities described in this subdivision are made
13 only to qualified purchasers or other persons the issuer reasonably
14 believes, after reasonable inquiry, to be qualified purchasers. A
15 corporation, partnership, or other organization specifically formed
16 for the purpose of acquiring the securities offered by the issuer in
17 reliance upon this exemption may be a qualified purchaser only if
18 each of the equity owners of the corporation, partnership, or other
19 organization is a qualified purchaser. Qualified purchasers include
20 the following:

21 (A) A person designated in Section 260.102.13 of Title 10 of
22 the California Code of Regulations.

23 (B) A person designated in subdivision (i) or any rule of the
24 commissioner adopted thereunder.

25 (C) A pension or profit-sharing trust of the issuer, a
26 self-employed individual retirement plan, or an individual
27 retirement account, if the investment decisions made on behalf of
28 the trust, plan, or account are made solely by persons who are
29 qualified purchasers.

30 (D) An organization described in Section 501(c)(3) of the
31 Internal Revenue Code, corporation, Massachusetts or similar
32 business trust, or partnership, each with total assets in excess of
33 five million dollars (\$5,000,000) according to its most recent
34 audited financial statements.

35 (E) A natural person who, either individually or jointly with the
36 person's spouse, (i) has a minimum net worth of one hundred fifty
37 thousand dollars (\$150,000) and had, during the immediately
38 preceding tax year, gross income in excess of one hundred thousand
39 dollars (\$100,000) and reasonably expects gross income in excess
40 of one hundred thousand dollars (\$100,000) during the current tax

1 year or (ii) has a minimum net worth of two hundred fifty thousand
2 dollars (\$250,000). “Net worth” shall be determined exclusive of
3 home, home furnishings, and automobiles. Other assets included
4 in the computation of net worth may be valued at fair market value.

5 Each natural person specified above, by reason of his or her
6 business or financial experience, or the business or financial
7 experience of his or her professional adviser, who is unaffiliated
8 with and who is not compensated, directly or indirectly, by the
9 issuer or any affiliate or selling agent of the issuer, can be
10 reasonably assumed to have the capacity to protect his or her
11 interests in connection with the transaction.

12 The amount of the investment of each natural person shall not
13 exceed 10 percent of the net worth, as determined by this
14 subdivision, of that natural person.

15 (F) Any other purchaser designated as qualified by rule of the
16 commissioner.

17 (2) Each purchaser represents that the purchaser is purchasing
18 for the purchaser’s own account (or trust account, if the purchaser
19 is a trustee) and not with a view to or for sale in connection with
20 a distribution of the security.

21 (3) Each natural person purchaser, including a corporation,
22 partnership, or other organization specifically formed by natural
23 persons for the purpose of acquiring the securities offered by the
24 issuer, receives, at least five business days before securities
25 described in this subdivision are sold to, or a commitment to
26 purchase is accepted from, the purchaser, the following information
27 in writing:

28 (A) The name, principal business and mailing address, and
29 telephone number of the issuer.

30 (B) The suitability standards for prospective purchasers as set
31 forth in paragraph (1) of this subdivision.

32 (C) A description of the issuer’s type of business organization
33 and the state in which the issuer is organized or incorporated.

34 (D) A brief description of the business of the issuer.

35 (E) If the issuer retains ownership or becomes the beneficiary
36 of the insurance policy, an audit report of an independent certified
37 public accountant together with a balance sheet and related
38 statements of income, retained earnings, and cashflows that reflect
39 the issuer’s financial position, the results of the issuer’s operations,
40 and the issuer’s cashflows as of a date within 15 months before

1 the date of the initial issuance of the securities described in this
2 subdivision. The financial statements listed in this subparagraph
3 shall be prepared in conformity with generally accepted accounting
4 principles. If the date of the audit report is more than 120 days
5 before the date of the initial issuance of the securities described
6 in this subdivision, the issuer shall provide unaudited interim
7 financial statements.

8 (F) The names of all directors, officers, partners, members, or
9 trustees of the issuer.

10 (G) A description of any order, judgment, or decree that is final
11 as to the issuing entity of any state, federal, or foreign country
12 governmental agency or administrator, or of any state, federal or
13 foreign country court of competent jurisdiction (i) revoking,
14 suspending, denying, or censuring for cause any license, permit,
15 or other authority of the issuer or of any director, officer, partner,
16 member, trustee, or person owning or controlling, directly or
17 indirectly, 10 percent or more of the outstanding interest or equity
18 securities of the issuer, to engage in the securities, commodities,
19 franchise, insurance, real estate, or lending business or in the offer
20 or sale of securities, commodities, franchises, insurance, real estate,
21 or loans, (ii) permanently restraining, enjoining, barring,
22 suspending, or censuring any such person from engaging in or
23 continuing any conduct, practice, or employment in connection
24 with the offer or sale of securities, commodities, franchises,
25 insurance, real estate, or loans, (iii) convicting any such person
26 of, or pleading nolo contendere by any such person to, any felony
27 or misdemeanor involving a security, commodity, franchise,
28 insurance, real estate, or loan, or any aspect of the securities,
29 commodities, franchise, insurance, real estate, or lending business,
30 or involving dishonesty, fraud, deceit, embezzlement, fraudulent
31 conversion, or misappropriation of property, or (iv) holding any
32 such person liable in a civil action involving breach of a fiduciary
33 duty, fraud, deceit, embezzlement, fraudulent conversion, or
34 misappropriation of property. This subparagraph does not apply
35 to any order, judgment, or decree that has been vacated, overturned,
36 or is more than 10 years old.

37 (H) Notice of the purchaser's right to rescind or cancel the
38 investment and receive a refund pursuant to Section 25508.5.

1 (I) The name, address, and telephone number of the issuing
2 insurance company, and the name, address, and telephone number
3 of the state or foreign country regulator of the insurance company.

4 (J) The total face value of the insurance policy and the
5 percentage of the insurance policy the purchaser will own.

6 (K) The insurance policy number, issue date, and type.

7 (L) If a group insurance policy, the name, address, and telephone
8 number of the group, and, if applicable, the material terms and
9 conditions of converting the policy to an individual policy,
10 including the amount of increased premiums.

11 (M) If a term insurance policy, the term and the name, address,
12 and telephone number of the person who will be responsible for
13 renewing the policy if necessary.

14 (N) That the insurance policy is beyond the state statute for
15 contestability and the reason therefor.

16 (O) The insurance policy premiums and terms of premium
17 payments.

18 (P) The amount of the purchaser's moneys that will be set aside
19 to pay premiums.

20 (Q) The name, address, and telephone number of the person
21 who will be the insurance policy owner and the person who will
22 be responsible for paying premiums.

23 (R) The date on which the purchaser will be required to pay
24 premiums and the amount of the premium, if known.

25 (S) A statement to the effect that any projected rate of return to
26 the purchaser from the purchase of a viatical or life settlement
27 contract or a fractionalized or pooled interest therein is based on
28 an estimated life expectancy for the person insured under the life
29 insurance policy; that the return on the purchase may vary
30 substantially from the expected rate of return based upon the actual
31 life expectancy of the insured that may be less than, equal to, or
32 may greatly exceed the estimated life expectancy; and that the rate
33 of return would be higher if the actual life expectancy were less
34 than, and lower if the actual life expectancy were greater than the
35 estimated life expectancy of the insured at the time the viatical or
36 life settlement contract was closed.

37 (T) A statement that the purchaser should consult with his or
38 her tax adviser regarding the tax consequences of the purchase of
39 the viatical or life settlement contract or fractionalized or pooled
40 interest therein and, if the purchaser is using retirement funds or

1 accounts for that purchase, whether or not any adverse tax
2 consequences might result from the use of those funds for the
3 purchase of that investment.

4 (U) Any other information as may be prescribed by rule of the
5 commissioner.

6 *SEC. 125. Section 25243.5 of the Corporations Code is*
7 *amended to read:*

8 25243.5. (a) A broker-dealer or investment adviser, or an agent
9 or representative thereof, shall not use a senior-specific
10 certification, credential, or professional designation in connection
11 with the offer, sale, or purchase of securities, or the provision of
12 advice as to the value of or the advisability of investing in,
13 purchasing, or selling securities, either directly or indirectly or
14 through publications or writings or by issuing or promulgating
15 analyses or reports relating to securities, that indicates or implies
16 that the broker-dealer, investment adviser, or an agent or
17 representative thereof, has special certification or training in
18 advising or servicing senior citizens or retirees, in such a way as
19 to mislead any person.

20 (b) The prohibited use of these certifications, credentials, or
21 professional designations includes, but is not limited to, the
22 following:

23 (1) The use of a certification, credential, or professional
24 designation by a person who has not actually earned or is otherwise
25 ineligible to use the certification, credential, or designation.

26 (2) The use of a nonexistent or self-conferred certification,
27 credential, or professional designation.

28 (3) The use of a certification, credential, or professional
29 designation that indicates or implies a level of occupational
30 qualifications obtained through education, training, or experience
31 that the person using the certification, credential, or professional
32 designation does not have.

33 (4) The use of a certification, credential, or professional
34 designation that was obtained from a designating, credentialing,
35 or certifying organization where any of the following apply:

36 (A) The organization is primarily engaged in the business of
37 instruction in sales marketing.

38 (B) The organization does not have reasonable standards or
39 procedures for assuring the competency of individuals to whom
40 it grants a certification, credential, or professional designation.

1 (C) The organization does not have reasonable standards or
2 procedures for monitoring and disciplining individuals with a
3 certification, credential, or professional designation for improper
4 or unethical conduct.

5 (D) The organization does not have reasonable continuing
6 education requirements for individuals with a certification,
7 credential, or professional designation in order to maintain the
8 certificate, credential, or professional designation.

9 (c) There is a rebuttable presumption that a designating,
10 credentialing, or certifying organization is not disqualified solely
11 for the purposes of paragraph (4) of subdivision (b) when the
12 organization has been accredited by the American National
13 Standards Institute, the National Commission for Certifying
14 Agencies, or an organization that is on the United States
15 Department of Education's list entitled "Accrediting Agencies
16 Recognized for Title IV Purposes" and the certification, credential,
17 or professional designation issued therefrom does not primarily
18 apply to sales and/or marketing.

19 (d) In determining whether a combination of words, or an
20 acronym standing for a combination of words, constitutes a
21 certification, credential, or professional designation indicating or
22 implying that a person has special certification or training in
23 advising or serving senior citizens or retirees, factors to be
24 considered shall include both of the following:

25 (1) Use of one or more word such as "senior," "retirement,"
26 "elder," or like words combined with one or more words such as
27 "certified," "registered," "chartered," "adviser," "specialist,"
28 "consultant," "planner," or like words, in the name of the
29 certification, credential, or professional designation or credential.

30 (2) The manner in which those words are combined.

31 (e) This section shall not apply to the use of a job title by a
32 person within an organization that is licensed or registered by the
33 Department of ~~Corporations~~ *Financial Services* or a federal
34 financial services regulatory agency, when that job title indicates
35 seniority or standing within the organization, or specifies a person's
36 area of specialization within the organization. For the purposes of
37 this subdivision, federal financial services regulatory agency
38 includes, but is not limited to, an agency that regulates brokers or
39 dealers, investment advisers, or investment companies as described

1 under the Investment Company Act of 1940 (15 U.S.C. Sec. 809-1
2 et seq.).

3 (f) (1) This section shall not apply to a broker or agent who is
4 licensed by the Department of Insurance and is in compliance with
5 the requirements of Section 787.1 of the Insurance Code.

6 (2) This subdivision shall be operative only if Assembly Bill
7 2150 of the 2007–08 Regular Session is chaptered and becomes
8 effective and that bill adds Section 787.1 to the Insurance Code.

9 (g) This section shall become operative on July 1, 2009.

10 *SEC. 126. Section 25247 of the Corporations Code is amended*
11 *to read:*

12 25247. (a) Upon written or oral request, the commissioner
13 shall make available to any person the information specified in
14 Section 6254.12 of the Government Code and made available
15 through the Public Disclosure Program of the National Association
16 of Security Dealers, Incorporated (NASD) with respect to any
17 broker-dealer or agent licensed or regulated under this part. The
18 commissioner shall also make available the current license status
19 and the year of issuance of the license of a broker-dealer. Any
20 information disclosed pursuant to this subdivision shall constitute
21 a public record. Notwithstanding any other provisions of law, the
22 commissioner may disclose either orally or in writing that
23 information pursuant to this subdivision. There shall be no liability
24 on the part of and no cause of action of any nature shall arise
25 against the State of California, the Department of ~~Corporations~~
26 *Financial Services*, the Commissioner of ~~Corporations~~ *Financial*
27 *Services*, or any officer, agent, or employee of the state or of the
28 Department of ~~Corporations~~ *Financial Services* for the release of
29 any false or unauthorized information, unless the release of that
30 information was done with knowledge and malice.

31 (b) Any broker-dealer or agent licensed or regulated under this
32 part shall upon request deliver a written notice to any client when
33 a new account is opened stating that information about the license
34 status or disciplinary record of a broker-dealer or an agent may be
35 obtained from the Department of ~~Corporations~~ *Financial Services*,
36 or from any other source that provides substantially similar
37 information.

38 (c) The notice provided under subdivision (b) shall contain the
39 office location or telephone number where the information may
40 be obtained.

1 (d) A broker-dealer or agent shall be exempt from providing
2 the notice required under subdivision (b) if a person who does not
3 have a financial relationship with the broker-dealer or agent,
4 requests only general operational information such as the nature
5 of the broker-dealer's or agent's business, office location, hours
6 of operation, basic services, and fees, but does not solicit advice
7 regarding investments or other services offered.

8 (e) Upon written or oral request, the commissioner shall make
9 available to any person the disciplinary records maintained on the
10 Investment Adviser Registration Depository and made available
11 through the Investment Advisor Public Disclosure Web site with
12 respect to any investment adviser, investment adviser
13 representative, or associated person of an investment adviser
14 licensed or regulated under this part. The commissioner shall also
15 make available the current license status and the year of issuance
16 of the license of an investment adviser. Any information disclosed
17 pursuant to this subdivision shall constitute a public record.
18 Notwithstanding any other provision of law, the commissioner
19 may disclose that information either orally or in writing pursuant
20 to this subdivision. There shall be no liability on the part of and
21 no cause of action of any nature shall arise against the State of
22 California, the Department of ~~Corporations~~ *Financial Services*,
23 the Commissioner of ~~Corporations~~ *Financial Services*, or any
24 officer, agent, or employee of the state or of the Department of
25 ~~Corporations~~ *Financial Services* for the release of any false or
26 unauthorized information, unless the release of that information
27 was done with knowledge and malice.

28 (f) Section 461 of the Business and Professions Code shall not
29 be applicable to the Department of ~~Corporations~~ *Financial Services*
30 when using a national, uniform application adopted or approved
31 for use by the Securities and Exchange Commission, the North
32 American Securities Administrators Association, or the National
33 Association of Securities Dealers Regulation, Inc. that is required
34 for participation in the Central Registration Depository or the
35 Investment Adviser Registration Depository.

36 (g) This section shall not require the disclosure of criminal
37 history record information maintained by the Federal Bureau of
38 Investigation pursuant to Section 534 of Title 28 of the United
39 States Code, and the rules thereunder, or information not otherwise
40 subject to disclosure under the Information Practices Act of 1977.

1 *SEC. 127. Section 25254 of the Corporations Code is amended*
2 *to read:*

3 25254. (a) If the commissioner determines it is in the public
4 interest, the commissioner may include in any administrative action
5 brought under this part a claim for ancillary relief, including, but
6 not limited to, a claim for restitution or disgorgement or damages
7 on behalf of the persons injured by the act or practice constituting
8 the subject matter of the action, and the administrative law judge
9 shall have jurisdiction to award additional relief.

10 (b) In an administrative action brought under this part, the
11 commissioner is entitled to recover costs, which in the discretion
12 of the administrative law judge may include an amount representing
13 reasonable attorney's fees and investigative expenses for the
14 services rendered, for deposit into the State Corporations Fund for
15 the use of the Department of ~~Corporations~~ *Financial Services*.

16 *SEC. 128. Section 25600 of the Corporations Code is amended*
17 *to read:*

18 ~~25600. There is in the state government, in the Business and~~
19 ~~Transportation Agency a Department of Corporations, which shall~~
20 ~~administer the provisions of this division. The chief officer of the~~
21 ~~Department of Corporations is the Commissioner of Corporations.~~
22 ~~The commissioner shall be appointed by the Governor and shall~~
23 ~~hold office at the pleasure of the Governor. He or she shall receive~~
24 ~~an annual salary as fixed in the Government Code. Within 15 days~~
25 ~~from the time of his or her appointment the commissioner shall~~
26 ~~take and subscribe to the constitutional oath of office and file it in~~
27 ~~the office of the Secretary of State.~~

28 ~~Whenever~~

29 25600. *Whenever* the term "Division of Corporations" is used
30 in the law, it means the Department of ~~Corporations~~ *Financial*
31 *Services. All references to the "department" shall be deemed to*
32 *refer to the Department of Financial Services. All references to*
33 *the "commissioner" shall be deemed to refer to the Commissioner*
34 *of Financial Services.*

35 *SEC. 129. Section 25601 of the Corporations Code is repealed.*

36 ~~25601. The commissioner shall have his principal office in the~~
37 ~~City of Sacramento, and may establish branch offices in the City~~
38 ~~and County of San Francisco, in the City of Los Angeles and in~~
39 ~~the City of San Diego. The commissioner shall from time to time~~
40 ~~obtain the necessary furniture, stationery, fuel, light, and other~~

1 proper conveniences for the transaction of the business of the
2 Department of Corporations.

3 *SEC. 130. Section 25602 of the Corporations Code is amended*
4 *to read:*

5 25602. In accordance with the laws governing the state civil
6 service, the commissioner shall employ and, with the approval of
7 the Department of Finance, fix the compensation of such personnel
8 as the commissioner needs to discharge properly the duties imposed
9 upon the commissioner by law, including legal counsel to act as
10 the attorney for the commissioner in actions or proceedings brought
11 by or against the commissioner under or pursuant to any provision
12 of any law under the commissioner's jurisdiction, or in which the
13 commissioner joins or intervenes as to a matter within the
14 commissioner's jurisdiction, as a friend of the court or otherwise,
15 and stenographic reporters to take and transcribe the testimony in
16 any formal hearing or investigation before the commissioner or
17 before a person authorized by the commissioner. ~~The personnel~~
18 ~~of the Department of Corporations shall perform such duties as~~
19 ~~the commissioner assigns to them.~~ Such employees as the
20 commissioner designates by rule or order shall, within 15 days
21 after their appointments, take and subscribe to the constitutional
22 oath of office and file it in the office of the Secretary of State.

23 *SEC. 131. Section 25603 of the Corporations Code is repealed.*

24 ~~25603. The commissioner shall adopt a seal bearing the~~
25 ~~inscription: "Commissioner of Corporations, State of California."~~
26 ~~The seal shall be affixed to or imprinted on all orders and~~
27 ~~certificates issued by him and such other instruments as he directs.~~
28 ~~All courts shall take judicial notice of this seal.~~

29 *SEC. 132. Section 25604 of the Corporations Code is amended*
30 *to read:*

31 25604. The administration and enforcement of, and the
32 education of the public relative to, the laws and programs of the
33 ~~Department of Corporations~~ *Financial Services* shall be supported
34 from the State Corporations Fund. Funds appropriated from the
35 State Corporations Fund and made available for expenditure for
36 any law or program of the department may come from fees
37 collected from the following:

38 (a) Section 25608, except for fees collected pursuant to
39 subdivisions (o) to (r), inclusive, of Section 25608.

40 (b) Section 25608.1.

1 *SEC. 133. Section 25606 of the Corporations Code is amended*
2 *to read:*

3 25606. (a) The Attorney General shall render to the
4 commissioner opinions upon all questions of law, relating to the
5 construction or interpretation of any law under the commissioner's
6 jurisdiction or arising in the administration thereof, that may be
7 submitted to the Attorney General by the commissioner, and upon
8 the commissioner's request shall act as the attorney for the
9 commissioner in actions and proceedings brought by or against
10 the commissioner under or pursuant to any provision of any law
11 under the commissioner's jurisdiction.

12 (b) Sections 11041, 11042 and 11043 of the Government Code
13 do not apply to the Commissioner of ~~Corporations~~ *Financial*
14 *Services*.

15 *SEC. 134. Section 25607 of the Corporations Code is amended*
16 *to read:*

17 25607. (a) Neither the commissioner nor any of the
18 commissioner's assistants, clerks, or deputies shall be interested
19 as a director, officer, shareholder, member (other than a member
20 of an organization formed for religious purposes), partner, agent,
21 or employee of any person who, during the period of the official's
22 or employee's association with the Department of ~~Corporations~~
23 *Financial Services*, (1) was licensed or applied for license as a
24 broker-dealer or investment adviser under this division, or (2)
25 applied for or secured the qualification of the sale of securities
26 under this division.

27 (b) Nothing contained in subdivision (a) shall prohibit the
28 holding or purchasing of any securities by any assistant, clerk, or
29 deputy in accordance with rules as the commissioner shall adopt
30 for the purpose of protecting the public interest and avoiding
31 conflicts of interest.

32 (c) Nothing contained in subdivision (a) shall prohibit the
33 holding or purchasing of any securities by the commissioner if any
34 of the following criteria is met:

35 (1) The securities held or purchased by the commissioner are
36 exempt from the qualification requirements of Sections 25110,
37 25120, and 25130 by virtue of Section 25100, provided that the
38 holding or purchasing of those securities is in accordance with
39 rules adopted for the purpose of protecting the public interest and
40 avoiding conflicts of interest.

(2) The securities held or purchased by the commissioner are not subject to Sections 25110, 25120, and 25130 by virtue of Section 25100.1, provided that the holding or purchasing of those securities is in accordance with rules adopted for the purpose of protecting the public interest and avoiding conflicts of interest.

(3) The holding or purchasing of any securities by the commissioner meets each of the following requirements:

(A) The securities are held or purchased through a management account or trust administered by a bank or trust company authorized to do business in this state, and the bank or trust company has sole investment discretion regarding the holding, purchase, and sale of securities.

(B) The commissioner did not, directly or indirectly, advise, counsel, command, or suggest the holding, purchase, or sale of any security or furnish any information relating to the security to the bank or trust company.

(C) The account or trust does not at any time have more than 10 percent of its total assets invested in the securities of any one issuer or hold more than 5 percent of the outstanding shares or units of any class of securities of any one issuer.

(D) The commissioner shall report to the Attorney General not less often than quarterly all holdings, purchases, and sales of securities by him or her as authorized in paragraph (3), which reports shall be retained by the Attorney General as public documents.

SEC. 135. Section 25612.5 of the Corporations Code is amended to read:

25612.5. (a) To encourage uniform interpretation and administration of this law and the Franchise Investment Law (Division 5 (commencing with Section 31000)) and effective securities and franchise regulation and enforcement, the commissioner may cooperate with the securities agencies or administrators of one or more states, Canadian provinces or territories, or other countries, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Securities Investor Protection Corporation, any self-regulatory organization, any national or international organization or securities officials or agencies, and any governmental law enforcement or regulatory agency.

1 (b) The cooperation authorized by subdivision (a) includes, but
2 is not limited to, the following actions:

3 (1) Prescribing rules and forms with a view to achieving
4 maximum uniformity in the form and content of registration
5 statements, applications, and reports wherever practicable.

6 (2) Participating in a nationwide central depository for
7 qualification or registration of securities under this law and for
8 documents or records required or allowed to be maintained under
9 this law.

10 (3) Participating in the Central Registration Depository, or any
11 successor or alternative nationwide or regional depository, for the
12 registering, certifying, or licensing of broker-dealers or agents, or
13 both.

14 (4) Participating in the Investment Adviser Registration
15 Depository, or any successor or alternative nationwide or regional
16 depository, for the registering, certifying, or licensing of investment
17 advisers or investment adviser representatives, or both.

18 (5) Cooperating in any regulatory activity necessary in the
19 administration of the Uniting and Strengthening America by
20 Providing Appropriate Tools Required to Intercept and Obstruct
21 Terrorism Act of 2001 (Public Law 107-56; USA Patriot Act),
22 consistent with state law.

23 (c) Notwithstanding any other provision of law, any application
24 for qualification, amendment to the application or related securities
25 qualification or registration document or notice under Sections
26 25100.1, 25101.1, 25102, 25102.1, 25110, 25120, 25130, and
27 25230.1 or record otherwise required to be signed that is filed in
28 this state as an electronic record pursuant to a nationwide central
29 depository for qualification or registration of securities, or any
30 electronic record filed through the Central Registration Depository
31 or the Investment Adviser Registration Depository, shall be deemed
32 to be a valid original document upon reproduction to paper form
33 by the Department of ~~Corporations~~ *Financial Services*.

34 (d) For purposes of this section, "electronic record" has the
35 same meaning as in subdivision (g) of Section 1633.2 of the Civil
36 Code.

37 *SEC. 136. Section 25614 of the Corporations Code is amended*
38 *to read:*

39 25614. All rules of the commissioner (other than those relating
40 solely to the internal administration of the Department of

1 ~~Corporations~~) *Financial Services*) shall be made, amended or
2 rescinded in accordance with the provisions of the Administrative
3 Procedure Act, Chapter 4 (commencing with Section 11370) of
4 Part 1 of Division 3 of Title 2 of the Government Code. Rules may
5 be adopted prior to the effective date of this law to become
6 effective upon its effective date.

7 *SEC. 137. Section 25620 of the Corporations Code is repealed.*

8 ~~25620. (a) Notwithstanding any other provision of law, the~~
9 ~~commissioner may by rule or order prescribe circumstances under~~
10 ~~which to accept electronic records or electronic signatures.~~
11 ~~However, nothing in this section requires the commissioner to~~
12 ~~accept electronic records or electronic signatures.~~

13 ~~(b) For purposes of this section, the following terms have the~~
14 ~~following meanings:~~

15 ~~(1) "Electronic record" means a record created, generated, sent,~~
16 ~~communicated, received, or stored by electronic means, and~~
17 ~~includes a record transmitted by means of facsimile machine or~~
18 ~~other telephone transeeiving equipment.~~

19 ~~(2) "Electronic signature" means an electronic sound, symbol,~~
20 ~~or process attached to or logically associated with an electronic~~
21 ~~record and executed or adopted by a person with the intent to sign~~
22 ~~the electronic record.~~

23 ~~(c) The Legislature hereby finds and declares that the~~
24 ~~Department of Corporations has continuously implemented~~
25 ~~methods to file records electronically, including broker-dealer and~~
26 ~~investment adviser applications, and is encouraged to continue to~~
27 ~~expand its use of electronic filings to the extent feasible, as budget,~~
28 ~~resources, and equipment are made available to accomplish that~~
29 ~~goal.~~

30 *SEC. 138. Section 25702 of the Corporations Code is amended*
31 *to read:*

32 25702. Whenever a person is entitled under this law to a hearing
33 in accordance with the provisions of the Administrative Procedure
34 Act, Chapter 5 (commencing with Section 11500) of Part 1 of
35 Division 3 of Title 2 of the Government Code, a formal hearing
36 before the Department of ~~Corporations~~ *Financial Services* may be
37 substituted with the consent of such person and of the
38 commissioner for such hearing before an independent hearing
39 officer; and in that case after such hearing before the Department

1 of ~~Corporations~~ *Financial Services* such person shall not be entitled
2 to any further administrative remedy.

3 *SEC. 139. Section 28033 of the Corporations Code is amended*
4 *to read:*

5 28033. “Commissioner” means the Commissioner of
6 ~~Corporations~~ *Financial Services* or his or her designee with respect
7 to a particular matter.

8 *SEC. 140. Section 28505 of the Corporations Code is amended*
9 *to read:*

10 28505. Subject to the provisions of Rules 250.10 and 250.10.5
11 of the Commissioner of ~~Corporations~~ *Financial Services*, (10
12 C.C.R. Secs. 250.10 and 250.10.5), the commissioner may make
13 available to the public any report filed with him or her under this
14 division or under any regulations or order issued under this
15 division.

16 *SEC. 141. Section 28715 of the Corporations Code is amended*
17 *to read:*

18 28715. Sections 11041, 11042, and 11043 of the Government
19 Code do not apply to the Commissioner of ~~Corporations~~ *Financial*
20 *Services*.

21 *SEC. 142. Section 29200 of the Corporations Code is amended*
22 *to read:*

23 29200. Every person doing business as a broker or making
24 contracts as a broker or agent for the purchase or sale of any
25 securities or commodities on any board of trade or exchange shall
26 keep or cause to be kept at his *or her* office or place of business
27 correct and permanent records or books of account showing each
28 of ~~such~~ *those* transactions as a separate item. The failure so to keep
29 or cause to be kept ~~such~~ *those* records or books of account is prima
30 facie evidence that any such contract was bucketing or
31 bucketshopping.

32 ~~Such~~

33 *Those* records or books of account shall at all times be open to
34 inspection by the Commissioner of ~~Corporations~~ *Financial Services*
35 or by any deputy, investigator, or auditor of the Department of
36 ~~Corporations~~ *Financial Services* to whom he *or she* may delegate
37 ~~such~~ *that* authority in writing.

38 *SEC. 143. Section 29503 of the Corporations Code is amended*
39 *to read:*

1 29503. “Commissioner” means the Commissioner of
2 ~~Corporations~~ *Financial Services*.

3 *SEC. 144. Section 31004 of the Corporations Code is amended*
4 *to read:*

5 31004. “Commissioner” means the Commissioner of
6 ~~Corporations~~ *Financial Services*.

7 *SEC. 145. Section 31210 of the Corporations Code is amended*
8 *to read:*

9 31210. It is unlawful for any person to effect or attempt to
10 effect a sale of a franchise in this state, except in transactions
11 exempted under Chapter 1 (commencing with Section 31100) of
12 Part 2 of this division, unless such person is: (1) identified in an
13 application or amended application filed with the commissioner
14 pursuant to Part 2 (commencing with Section 31100) of this
15 division, (2) licensed by the California Department of ~~Real Estate~~
16 *Financial Services* as a real estate broker or real estate ~~salesman~~
17 *salesperson*, or (3) licensed by the commissioner as a broker-dealer
18 or agent pursuant to the Corporate Securities Law of 1968.

19 *SEC. 146. Section 31408 of the Corporations Code is amended*
20 *to read:*

21 31408. (a) If the commissioner determines it is in the public
22 interest, the commissioner may include in any administrative action
23 brought under this division, including a stop order, a claim for
24 ancillary relief, including, but not limited to, a claim for rescission,
25 restitution or disgorgement or damages on behalf of the persons
26 injured by the act or practice constituting the subject matter of the
27 action, and the administrative law judge shall have jurisdiction to
28 award additional relief. The person affected may be required to
29 attend remedial education, as directed by the commissioner.

30 (b) In an administrative action brought under this part the
31 commissioner is entitled to recover costs, which in the discretion
32 of the administrative law judge may include any amount
33 representing reasonable attorney’s fees and investigative expenses
34 for the services rendered, for deposit into the State Corporations
35 Fund for the use of the Department of ~~Corporations~~ *Financial*
36 *Services*.

37 *SEC. 147. Section 31503 of the Corporations Code is amended*
38 *to read:*

39 31503. All rules of the commissioner, other than those relating
40 solely to the internal administration of the Department of

1 ~~Corporations~~ *Financial Services*, shall be made, amended or
2 rescinded in accordance with the provisions of Chapter ~~4.5~~ 3.5
3 (commencing with Section ~~11371~~ 11340) of Part 1 of Division 3
4 of Title 2 of the Government Code.

5 *SEC. 148. Section 31513 of the Corporations Code is amended*
6 *to read:*

7 31513. Whenever a person is entitled under this law to a hearing
8 in accordance with the provisions of Chapter 5 (commencing with
9 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
10 Code, a formal hearing before the Department of ~~Corporations~~
11 *Financial Services* may be substituted with the consent of ~~such~~
12 *that* person and of the commissioner for ~~such that~~ hearing before
13 an independent hearing officer; and in that case after ~~such that~~
14 hearing before the Department of ~~Corporations~~ *such Financial*
15 *Services* *that* person shall not be entitled to any further
16 administrative remedy.

17 *SEC. 149. Section 112 of the Financial Code is amended to*
18 *read:*

19 112. “Commissioner” means the Commissioner of Financial
20 ~~Institutions~~ *Services* and “department” means the Department of
21 ~~Financial Institutions~~ *Services*.

22 *SEC. 150. Section 200 of the Financial Code is amended to*
23 *read:*

24 200. (a) In this section:

25 (1) “Business and industrial development corporation” means
26 a corporation licensed under Division 15 (commencing with
27 Section 31000).

28 (2) “Payment instrument” has the same meaning as set forth in
29 Section 33059.

30 (3) “Traveler’s check” has the same meaning as set forth in
31 Section 1852.

32 (b) There is in the state government, in the Business,
33 Transportation and Housing Agency, a Department of Financial
34 ~~Institutions~~ *Services* which has charge of the execution of, among
35 other laws, the laws of this state relating to any of the following:
36 ~~(1) banks or trust companies or the banking or trust business; (2)~~
37 ~~savings associations or the savings association business; (3) credit~~
38 ~~unions or the credit union business; (4) persons who engage in the~~
39 ~~business of receiving money for transmission to foreign nations~~
40 ~~or such business; (5) issuers of traveler’s checks or the traveler’s~~

~~1 check business; (6) issuers of payment instruments or the payment
2 instrument business; (7) business and industrial development
3 corporations or the business and industrial development corporation
4 business, or (8) insurance premium finance agencies or the
5 insurance premium finance business.~~

(1) The Real Estate Law (Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code).

(2) The Subdivided Lands Law (Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of the Business and Professions Code).

(3) The Vacation Ownership and Time-Share Act of 2004 (Chapter 2 (commencing with Section 11210) of Part 2 of Division 4 of the Business and Professions Code).

(4) The Real Estate Appraisers' Licensing and Certification Law (Part 3 (commencing with Section 11302) of Division 4 of the Business and Professions Code).

(5) Broker-dealers and the agents or registered representatives of broker-dealers (Chapter 2 (commencing with Section 25210) of Part 3 of Division 1 of Title 4 of the Corporations Code).

(6) Investment advisers and investment adviser representatives or associated persons (Chapter 3 (commencing with Section 25230) of Part 3 of Division 1 of Title 4 of the Corporations Code).

(7) Capital access companies (Division 3 (commencing with Section 28000) of Title 4 of the Corporations Code).

(8) The Franchise Investment Law (Division 5 (commencing with Section 31000) of Title 4 of the Corporations Code).

(9) Banks and trust companies (Division 1 (commencing with Section 99)).

(10) Foreign banks (Chapter 13.5 (commencing with Section 1700) of Division 1).

(11) Money transmitters (Chapter 14 (commencing with Section 1800) of Division 1).

(12) Issuers of traveler's checks (Chapter 14A (commencing with Section 1851) of Division 1).

(13) Bank holding companies (Chapter 21 (commencing with Section 3700) of Division 1).

(14) Checksellers, billpayers, and proraters (Division 3 (commencing with Section 12000)).

(15) Credit unions (Division 5 (commencing with Section 14000)).

1 (16) Escrow agents (Division 6 (commencing with Section
2 17000)).

3 (17) Industrial loan companies (Division 7 (commencing with
4 Section 18000)).

5 (18) The Finance Lenders Law (Division 9 (commencing with
6 Section 22000)).

7 (19) Deferred deposit originators (Division 10 (commencing
8 with Section 23000)).

9 (20) Securities depositories (Division 14 (commencing with
10 Section 30000)).

11 (21) Business and industrial development corporations (Division
12 15 (commencing with Section 31000)).

13 (22) Sellers of payment instruments (Division 16 (commencing
14 with Section 33000)).

15 (23) The California Residential Mortgage Lending Act (Division
16 20 (commencing with Section 50000)).

17 (24) Any other persons, entities, or transactions subject to
18 regulation and oversight by, or subject to the jurisdiction of, the
19 former Department of Corporations, the Department of Financial
20 Institutions, the Department of Real Estate, or the Office of Real
21 Estate Appraisers.

22 SEC. 151. Section 201 of the Financial Code is amended to
23 read:

24 201. This chapter is applicable to ~~this division, Division 1~~
25 ~~(commencing with Section 99), Division 1.5 (commencing with~~
26 ~~Section 4800), Division 5 (commencing with Section 14000),~~
27 ~~Division 7 (commencing with Section 18000), Division 15~~
28 ~~(commencing with Section 31000), and Division 16 (commencing~~
29 ~~with Section 33000); any of the persons, entities, or transactions~~
30 ~~described in subdivision (b) of Section 200.~~

31 SEC. 152. Section 203 is added to the Financial Code, to read:

32 203. Notwithstanding any other provision of law, all references
33 to the Department of Corporations, the Department of Financial
34 Institutions, the Department of Real Estate, or the Office of Real
35 Estate Appraisers shall be deemed to refer to the Department of
36 Financial Services.

37 SEC. 153. Section 210 of the Financial Code is amended to
38 read:

39 210. The chief officer of the Department of Financial
40 Institutions Services is the Commissioner of Financial Institutions

1 *Services*. The Commissioner of Financial ~~Institutions~~ *Services* is
2 the head of the department and, except as otherwise provided in
3 this code, is subject to the provisions of the Government Code
4 relating to department heads, but need not reside in Sacramento.

5 *SEC. 154. Section 210.5 of the Financial Code is amended to*
6 *read:*

7 210.5. As of the operative date of this section:

8 (a) In this section, “order” means any approval, consent,
9 authorization, exemption, denial, prohibition, requirement, or other
10 administrative action, applicable to a specific case.

11 (b) The office of the Superintendent of Banks and the State
12 Banking Department are abolished. All powers, duties,
13 responsibilities, and functions of the Superintendent of Banks and
14 the State Banking Department are transferred to the Commissioner
15 of Financial ~~Institutions~~ *Services* and the Department of Financial
16 ~~Institutions~~ *Services*, respectively. The Commissioner of Financial
17 ~~Institutions~~ *Services* and the Department of Financial ~~Institutions~~
18 *Services* succeed to all the rights and property of the Superintendent
19 of Banks and the State Banking Department, respectively; the
20 Commissioner of Financial ~~Institutions~~ *Services* and the
21 Department of Financial ~~Institutions~~ *Services* are subject to all the
22 debts and liabilities of the Superintendent of Banks and the State
23 Banking Department, respectively, as if the Commissioner of
24 Financial ~~Institutions~~ *Services* and the Department of Financial
25 ~~Institutions~~ *Services* had incurred them. Any action or proceeding
26 by or against the Superintendent of Banks or the State Banking
27 Department may be prosecuted to judgment, which shall bind the
28 Commissioner of Financial ~~Institutions~~ *Services* or the Department
29 of Financial ~~Institutions~~ *Services*, respectively, or the
30 Commissioner of Financial ~~Institutions~~ *Services* or the Department
31 of Financial ~~Institutions~~ *Services* may be proceeded against or
32 substituted in place of the Superintendent of Banks or the State
33 Banking Department, respectively. References in the Constitution
34 of the State of California or in any statute or regulation to the
35 Superintendent of Banks or to the State Banking Department mean
36 the Commissioner of Financial ~~Institutions~~ *Services* or the
37 Department of Financial ~~Institutions~~ *Services*, respectively. All
38 agreements entered into with, and orders and regulations issued
39 by, the Superintendent of Banks or the State Banking Department
40 shall continue in effect as if the agreements were entered into with,

1 and the orders and regulations were issued by, the Commissioner
2 of Financial ~~Institutions Services~~ or the Department of Financial
3 ~~Institutions Services~~, respectively.

4 (c) The office of the Savings and Loan Commissioner and the
5 Department of Savings and Loan are abolished. All powers, duties,
6 responsibilities, and functions of the Savings and Loan
7 Commissioner and the Department of Savings and Loan are
8 transferred to the Commissioner of Financial ~~Institutions Services~~
9 and the Department of Financial ~~Institutions Services~~, respectively.

10 The Commissioner of Financial ~~Institutions Services~~ and the
11 Department of Financial ~~Institutions Services~~ succeed to all the
12 rights and property of the Savings and Loan Commissioner and
13 the Department of Savings and Loan, respectively; the
14 Commissioner of Financial ~~Institutions Services~~ and the
15 Department of Financial ~~Institutions Services~~ are subject to all the
16 debts and liabilities of the Savings and Loan Commissioner and
17 the Department of Savings and Loan, respectively, as if the
18 Commissioner of Financial ~~Institutions Services~~ and the
19 Department of Financial ~~Institutions Services~~ had incurred them.

20 Any action or proceeding by or against the Savings and Loan
21 Commissioner or the Department of Savings and Loan may be
22 prosecuted to judgment, which shall bind the Commissioner of
23 Financial ~~Institutions Services~~ or the Department of Financial
24 ~~Institutions Services~~, respectively, or the Commissioner of
25 Financial ~~Institutions Services~~ or the Department of Financial
26 ~~Institutions Services~~ may be proceeded against or substituted in
27 place of the Savings and Loan Commissioner or the Department
28 of Savings and Loan, respectively. References in the Constitution
29 of the State of California or in any statute or regulation to the
30 Savings and Loan Commissioner or to the Department of Savings
31 and Loan mean the Commissioner of Financial ~~Institutions Services~~
32 or the Department of Financial ~~Institutions Services~~, respectively.
33 All agreements entered into with, and orders and regulations issued
34 by, the Savings and Loan Commissioner or the Department of
35 Savings and Loan shall continue in effect as if the agreements were
36 entered into with, and the orders and regulations were issued by,
37 the Commissioner of Financial ~~Institutions Services~~ or the
38 Department of Financial ~~Institutions Services~~.

39 (d) ~~All powers, duties, responsibilities, and functions of the~~
40 ~~Commissioner of Corporations and the Department of Corporations~~

1 with respect to credit unions, the credit union business, industrial
2 loan companies, or the industrial loan business are transferred to
3 the Commissioner of Financial Institutions and the Department of
4 Financial Institutions, respectively. The Commissioner of Financial
5 Institutions and the Department of Financial Institutions succeed
6 to all the rights and property of the Commissioner of Corporations
7 and the Department of Corporations, respectively, with respect to
8 credit unions, the credit union business, industrial loan companies,
9 or the industrial loan business; the Commissioner of Financial
10 Institutions and the Department of Financial Institutions are subject
11 to all the debts and liabilities of the Commissioner of Corporations
12 and the Department of Corporations, respectively, with respect to
13 credit unions, the credit union business, industrial loan companies,
14 or the industrial loan business, as if the Commissioner of Financial
15 Institutions and the Department of Financial Institutions had
16 incurred them. Any action or proceeding by or against the
17 Commissioner of Corporations or the Department of Corporations
18 with respect to credit unions, the credit union business, industrial
19 loan companies, or the industrial loan business may be prosecuted
20 to judgment, which shall bind the Commissioner of Financial
21 Institutions or the Department of Financial Institutions,
22 respectively, or the Commissioner of Financial Institutions or the
23 Department of Financial Institutions may be proceeded against or
24 substituted in place of the Commissioner of Corporations or the
25 Department of Corporations, respectively. References in the
26 Constitution of the State of California or any statute or regulation
27 to the Commissioner of Corporations or to the Department of
28 Corporations with respect to credit unions, the credit union
29 business, industrial loan companies, or the industrial loan business
30 mean the Commissioner of Financial Institutions or the Department
31 of Financial Institutions, respectively. All agreements entered into
32 with, and orders and regulations issued by, the Commissioner of
33 Corporations or the Department of Corporations in the exercise of
34 authority under any law relating to credit unions, the credit union
35 business, industrial loan companies, or the industrial loan business,
36 shall continue in effect as if the agreements were entered into with,
37 and the orders and regulations were issued by, the Commissioner
38 of Financial Institutions or the Department of Financial Institutions.
39 *SEC. 155. Section 210.9 is added to the Financial Code, to*
40 *read:*

1 210.9. (a) *The Department of Corporations, the Department*
2 *of Financial Institutions, the Department of Real Estate, and the*
3 *Office of Real Estate Appraisers are abolished.*

4 (b) *All powers, duties, purposes, jurisdiction, responsibilities,*
5 *and functions of the Commissioner of Corporations, the*
6 *Commissioner of Financial Institutions, the Real Estate*
7 *Commissioner, and the Director of the Office of Real Estate*
8 *Appraisers and the Department of Corporations, the Department*
9 *of Financial Institutions, the Department of Real Estate, and the*
10 *Office of Real Estate Appraisers are transferred to the*
11 *Commissioner of Financial Services and the Department of*
12 *Financial Services, respectively.*

13 (c) *The Commissioner of Financial Services and the Department*
14 *of Financial Services succeed to all the rights and property of the*
15 *Commissioner of Corporations, the Commissioner of Financial*
16 *Institutions, the Real Estate Commissioner, and the Director of*
17 *the Office of Real Estate Appraisers and the Department of*
18 *Corporations, the Department of Financial Institutions, the*
19 *Department of Real Estate, and the Office of Real Estate*
20 *Appraisers, respectively; the Commissioner of Financial Services*
21 *and the Department of Financial Services are subject to all the*
22 *debts and liabilities of the Commissioner of Corporations, the*
23 *Commissioner of Financial Institutions, the Real Estate*
24 *Commissioner, and the Director of the Office of Real Estate*
25 *Appraisers and the Department of Corporations, the Department*
26 *of Financial Institutions, the Department of Real Estate, and the*
27 *Office of Real Estate Appraisers, respectively, as if the*
28 *Commissioner of Financial Services and the Department of*
29 *Financial Services had incurred them.*

30 (d) *Any action or proceeding by or against the Commissioner*
31 *of Corporations, the Commissioner of Financial Institutions, the*
32 *Real Estate Commissioner, and the Director of the Office of Real*
33 *Estate Appraisers or the Department of Corporations, the*
34 *Department of Financial Institutions, the Department of Real*
35 *Estate, and the Office of Real Estate Appraisers may be prosecuted*
36 *to judgment, which shall bind the Commissioner of Financial*
37 *Services or the Department of Financial Services, respectively, or*
38 *the Commissioner of Financial Services or the Department of*
39 *Financial Services may be proceeded against or substituted in*
40 *place of the Commissioner of Corporations, the Commissioner of*

1 *Financial Institutions, the Real Estate Commissioner, and the*
2 *Director of the Office of Real Estate Appraisers and the*
3 *Department of Corporations, the Department of Financial*
4 *Institutions, the Department of Real Estate, and the Office of Real*
5 *Estate Appraisers, respectively.*

6 *(e) The following funds and accounts shall be under the*
7 *jurisdiction of the Commissioner of Financial Services:*

8 *(1) The Real Estate Fund created by Section 10450 of the*
9 *Business and Professions Code.*

10 *(2) The Education and Research Account, of the Real Estate*
11 *Fund created by Section 10450.6 of the Business and Professions*
12 *Code.*

13 *(3) The Recovery Account, of the Real Estate Fund created by*
14 *Section 10450.6 of the Business and Professions Code.*

15 *(4) The Real Estate Appraisers Regulation Fund created by*
16 *Section 11410 of the Business and Professions Code.*

17 *(5) The Administration Account, of the Real Estate Appraisers*
18 *Regulation Fund created by Section 11411 of the Business and*
19 *Professions Code.*

20 *(6) The Recovery Account, of the Real Estate Appraisers*
21 *Regulation Fund created by Section 11411 of the Business and*
22 *Professions Code.*

23 *(7) The Financial Institutions Fund created by Section 265.*

24 *(8) The Credit Union Fund created by Section 14354.*

25 *(9) The Guaranty Corporation Fund created by Section 18535.*

26 *(10) The State Corporations Fund created by subdivision (b)*
27 *of Section 13978.6 of the Government Code.*

28 *(11) Any other fund or account subject to the jurisdiction of the*
29 *former Department of Corporations, the Department of Financial*
30 *Institutions, the Department of Real Estate, or the Office of Real*
31 *Estate Appraisers.*

32 *(f) References in the Constitution of the State of California or*
33 *in any statute or regulation to the Commissioner of Corporations,*
34 *the Commissioner of Financial Institutions, the Real Estate*
35 *Commissioner, and the Director of the Office of Real Estate*
36 *Appraisers or the Department of Corporations, the Department*
37 *of Financial Institutions, the Department of Real Estate, and the*
38 *Office of Real Estate Appraisers shall mean the Commissioner of*
39 *Financial Services or the Department of Financial Services,*
40 *respectively.*

(g) All agreements entered into with, and orders and regulations issued by, the Commissioner of Corporations, the Commissioner of Financial Institutions, the Real Estate Commissioner, and the Director of the Office of Real Estate Appraisers or the Department of Corporations, the Department of Financial Institutions, the Department of Real Estate, and the Office of Real Estate Appraisers shall continue in effect as if the agreements were entered into with, and the orders and regulations were issued by, the Commissioner of Financial Services or the Department of Financial Services.

SEC. 156. Section 215 of the Financial Code is amended to read:

215. The commissioner is responsible for the performance of all duties, the exercise of all powers and jurisdiction, and the assumption and discharge of all responsibilities vested by law in the department. The commissioner has and may exercise all the powers necessary or convenient for the administration and enforcement of, among other laws, the laws described in subdivision (b) of Section 200. The commissioner may issue such rules and regulations consistent with law as he or she may deem necessary or advisable in executing the powers, duties, and responsibilities of the department.

SEC. 157. Section 262 of the Financial Code is amended to read:

262. (a) The commissioner shall inform the ~~Commissioner of Corporations and other~~ appropriate state and federal officials charged with the regulation of financial institutions or securities transactions of any enforcement actions, including, but not limited to, civil or criminal actions, cease and desist orders, license or authorization suspensions or revocations, or an open investigation.

(b) The commissioner shall inform the ~~Commissioner of Corporations and other~~ appropriate state and federal officials charged with the regulation of financial institutions or securities transactions if it appears that any bank, bank holding company, savings association, savings and loan holding company, credit union, industrial loan company, industrial loan holding company, or other licensee of the department is conducting its business in a fraudulent, unsafe, unsound, or injurious manner, or has suffered or will suffer substantial financial loss or damage, and it appears

1 to the commissioner that the information is relevant to the
2 regulatory activities of the other agency.

3 *SEC. 158. Section 1856 of the Financial Code is amended to*
4 *read:*

5 1856. Each application for a license shall be accompanied by
6 such information and documents as the commissioner may by
7 regulation or order reasonably require, including but not limited
8 to:

9 (a) The most recent audited and unconsolidated statement of
10 income and statement of condition of applicant as prepared by an
11 independent certified public accountant in conformity with
12 generally accepted accounting principles applied on a consistent
13 basis.

14 (b) Description of applicant's business and mode of operation.

15 (c) Enumeration of names of parent and active subsidiary
16 organizations of applicant, if any.

17 (d) Copies of the applicant's filings for the preceding year with
18 the Securities and Exchange Commission, and copies of the most
19 recent filings for the preceding year with the ~~California~~
20 ~~Corporations~~ Commissioner of Financial Services, or other
21 California state agency.

22 (e) Detailed statement of eligible securities of applicant,
23 including identification by name and present value, which applicant
24 intends to use in the conduct of its business of issuing traveler's
25 checks.

26 (f) Amount of issuer's liability for traveler's checks outstanding
27 in California, and in the United States, as of the last business day
28 of the preceding calendar quarter.

29 (g) Name and principal office of each agent, selling or to be
30 selling traveler's checks in California.

31 (h) Name of other states, in which applicant has been granted
32 a license or authorization to sell or is selling traveler's checks.

33 *SEC. 159. Section 4057 of the Financial Code is amended to*
34 *read:*

35 4057. (a) An entity that negligently discloses or shares
36 nonpublic personal information in violation of this division shall
37 be liable, irrespective of the amount of damages suffered by the
38 consumer as a result of that violation, for a civil penalty not to
39 exceed two thousand five hundred dollars (\$2,500) per violation.
40 However, if the disclosure or sharing results in the release of

1 nonpublic personal information of more than one individual, the
2 total civil penalty awarded pursuant to this subdivision shall not
3 exceed five hundred thousand dollars (\$500,000).

4 (b) An entity that knowingly and willfully obtains, discloses,
5 shares, or uses nonpublic personal information in violation of this
6 division shall be liable for a civil penalty not to exceed two
7 thousand five hundred dollars (\$2,500) per individual violation,
8 irrespective of the amount of damages suffered by the consumer
9 as a result of that violation.

10 (c) In determining the penalty to be assessed pursuant to a
11 violation of this division, the court shall take into account the
12 following factors:

13 (1) The total assets and net worth of the violating entity.

14 (2) The nature and seriousness of the violation.

15 (3) The persistence of the violation, including any attempts to
16 correct the situation leading to the violation.

17 (4) The length of time over which the violation occurred.

18 (5) The number of times the entity has violated this division.

19 (6) The harm caused to consumers by the violation.

20 (7) The level of proceeds derived from the violation.

21 (8) The impact of possible penalties on the overall fiscal
22 solvency of the violating entity.

23 (d) In the event a violation of this division results in the identity
24 theft of a consumer, as defined by Section 530.5 of the Penal Code,
25 the civil penalties set forth in this section shall be doubled.

26 (e) The civil penalties provided for in this section shall be
27 exclusively assessed and recovered in a civil action brought in the
28 name of the people of the State of California in any court of
29 competent jurisdiction by any of the following:

30 (1) The Attorney General.

31 (2) The functional regulator with jurisdiction over regulation
32 of the financial institution as follows:

33 (A) In the case of banks, savings associations, credit unions,
34 commercial lending companies, and bank holding companies, by
35 the Department of Financial Institutions *Services* or the appropriate
36 federal authority; (B) in the case of any person engaged in the
37 business of insurance, by the Department of Insurance; (C) in the
38 case of any investment broker or dealer, investment company,
39 investment advisor, residential mortgage lender or finance lender,
40 by the Department of Corporations *Financial Services*; and (D) in

1 the case of a financial institution not subject to the jurisdiction of
2 any functional regulator listed under subparagraphs (A) to (C),
3 inclusive, above, by the Attorney General.

4 *SEC. 160. Section 4805.055 of the Financial Code is amended*
5 *to read:*

6 4805.055. “Commissioner” means the Commissioner of
7 Financial ~~Institutions~~ Services.

8 *SEC. 161. Section 4970 of the Financial Code is amended to*
9 *read:*

10 4970. For purposes of this division:

11 (a) “Annual percentage rate” means the annual percentage rate
12 for the loan calculated according to the provisions of the federal
13 Truth in Lending Act and the regulations adopted thereunder by
14 the Federal Reserve Board.

15 (b) “Covered loan” means a consumer loan in which the original
16 principal balance of the loan does not exceed the most current
17 conforming loan limit for a single-family first mortgage loan
18 established by the Federal National Mortgage Association in the
19 case of a mortgage or deed of trust, and where one of the following
20 conditions are met:

21 (1) For a mortgage or deed of trust, the annual percentage rate
22 at consummation of the transaction will exceed by more than eight
23 percentage points the yield on Treasury securities having
24 comparable periods of maturity on the 15th day of the month
25 immediately preceding the month in which the application for the
26 extension of credit is received by the creditor.

27 (2) The total points and fees payable by the consumer at or
28 before closing for a mortgage or deed of trust will exceed 6 percent
29 of the total loan amount.

30 (c) “Points and fees” shall include the following:

31 (1) All items required to be disclosed as finance charges under
32 Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal
33 Regulations, including the Official Staff Commentary, as amended
34 from time to time, except interest.

35 (2) All compensation and fees paid to mortgage brokers in
36 connection with the loan transaction.

37 (3) All items listed in Section 226.4(c)(7) of Title 12 of the Code
38 of Federal Regulations, only if the person originating the covered
39 loan receives direct compensation in connection with the charge.

(d) “Consumer loan” means a consumer credit transaction that is secured by real property located in this state used, or intended to be used or occupied, as the principal dwelling of the consumer that is improved by a one-to-four residential unit. “Consumer loan” does not include a reverse mortgage, an open line of credit as defined in Part 226 of Title 12 of the Code of Federal Regulations (Regulation Z), or a consumer credit transaction that is secured by rental property or second homes. “Consumer loan” does not include a bridge loan. For purposes of this division, a bridge loan is any temporary loan, having a maturity of one year or less, for the purpose of acquisition or construction of a dwelling intended to become the consumer’s principal dwelling.

(e) “Original principal balance” means the total initial amount the consumer is obligated to repay on the loan.

(f) “Licensing agency” shall mean the Department of ~~Real Estate~~ *Financial Services* for licensed real estate brokers, ~~the Department of Corporations~~ for licensed residential mortgage lenders and licensed finance lenders and brokers, and ~~the Department of Financial Institutions~~ for commercial and industrial banks and savings associations and credit unions organized in this state.

(g) “Licensed person” means a real estate broker licensed under the Real Estate Law (Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code), a finance lender or broker licensed under the California Finance Lenders Law (Division 9 (commencing with Section 22000)), a residential mortgage lender licensed under the California Residential Mortgage Lending Act (Division 20 (commencing with Section 50000)), a commercial or industrial bank organized under the Banking Law (Division 1 (commencing with Section 99)), a savings association organized under the Savings Association Law (Division 2 (commencing with Section 5000)), and a credit union organized under the California Credit Union Law (Division 5 (commencing with Section 14000)). Nothing in this division shall be construed to prevent any enforcement by a governmental entity against any person who originates a loan and who is exempt or excluded from licensure by all of the licensing agencies, based on a violation of any provision of this division. Nothing in this division shall be construed to prevent the Department of ~~Real Estate~~ *Financial Services* from enforcing this division against a licensed salesperson employed by a licensed real estate broker as if that salesperson

1 were a licensed person under this division. A licensed person
2 includes any person engaged in the practice of consumer lending,
3 as defined in this division, for which a license is required under
4 any other provision of law, but whose license is invalid, suspended
5 or revoked, or where no license has been obtained.

6 (h) “Originate” means to arrange, negotiate, or make a consumer
7 loan.

8 (i) “Servicer” has the same meaning provided in Section 6 (i)(2)
9 of the Real Estate Settlement Procedures Act of 1974.

10 *SEC. 162. Section 4990 of the Financial Code is amended to*
11 *read:*

12 4990. (a) Any person convicted of a felony violation of any
13 of the provisions specified in subdivision (b) shall not serve in any
14 capacity as a director or officer or in any other position involving
15 any management duties with a financial institution in this state
16 with accounts insured by an agency or instrumentality of the United
17 States or a private share insurance or guaranty arrangement. This
18 subdivision does not, however, apply to any director or officer of
19 a financial institution, or to persons serving in managerial positions
20 for financial institutions, whose office or employment with a
21 financial institution commenced, and whose felony conviction
22 occurred, prior to January 1, 1991.

23 (b) Subdivision (a) applies to felony convictions of offenses
24 specified in Chapter 18 (commencing with Section 3350) of
25 Division 1, Article 4 (commencing with Section 5300) of Chapter
26 1 of Division 2, Article 8 (commencing with Section 14750) of
27 Chapter 4 of Division 5, and Chapter 6 (commencing with Section
28 18435) of Division 7. Subdivision (a) also applies to felony
29 convictions of offenses specified in provisions of the laws of the
30 United States added or amended by the federal Financial
31 Institutions Reform, Recovery, and Enforcement Act of 1989
32 (Public Law 101-73).

33 (c) On and after January 1, 1991, any person who seeks
34 employment by, or a controlling interest in, a financial institution
35 specified in subdivision (a) shall, as a condition to obtaining that
36 employment or controlling interest, permit the financial institution,
37 its regulatory agency, or both to have access to that person’s state
38 summary criminal history information, as defined in Section 11105
39 of the Penal Code, for purposes of determining whether the person

1 has a prior conviction of a felony offense specified in subdivision
2 (b) or any theft offense.

3 (d) Any state summary criminal history information obtained
4 pursuant to this subdivision shall be kept confidential and no
5 recipient under this subdivision shall disclose the contents other
6 than for the purpose of determining eligibility for employment by,
7 or acquisition of a controlling interest in, a financial institution
8 specified in subdivision (a).

9 (e) The authority granted by this section to the Commissioner
10 of Financial ~~Institutions~~ *Services* and other regulatory agencies
11 shall be in addition to any other authority granted by law to obtain
12 information about the background of any person. Nothing in this
13 section shall be construed to limit any authority of the
14 Commissioner of Financial ~~Institutions~~ *Services* or any regulatory
15 agency otherwise provided by law.

16 *SEC. 163. Section 5104 of the Financial Code is amended to*
17 *read:*

18 5104. "Commissioner" means the Commissioner of Financial
19 ~~Institutions~~ *Services*.

20 *SEC. 164. Section 12003 of the Financial Code is amended to*
21 *read:*

22 12003. "Commissioner" means the Commissioner of
23 ~~Corporations~~ *Financial Services* of the State of California, or any
24 deputy, investigator, auditor, or any other person employed by
25 him.

26 *SEC. 165. Section 12100 of the Financial Code is amended to*
27 *read:*

28 12100. This division does not apply to any of the following:

29 (a) Any person, or his or her authorized agent, doing business
30 under license and authority of the Commissioner of Financial
31 ~~Institutions~~ *Services* under Division 1 (commencing with Section
32 99) or under any law of this state or of the United States relating
33 to banks, trust companies, building or savings associations,
34 industrial loan companies, personal property brokers, credit unions,
35 title insurance companies or underwritten title companies, as
36 defined in Section 12402 of the Insurance Code, escrow agents
37 subject to Division 6 (commencing with Section 17000), or finance
38 lenders subject to Division 9 (commencing with Section 22000).

39 (b) (1) Any person licensed under Chapter 14A (commencing
40 with Section 1851) of Division 1 or any agent of the person, when

1 selling any traveler's check, as defined in Section 1852, which is
2 issued by the person.

3 (2) Any person licensed under Division 16 (commencing with
4 Section 33000) or any agent of the person, when selling any
5 payment instrument, as defined in Section 33059, which is issued
6 by the person.

7 (c) The services of a person licensed to practice law in this state,
8 when the person renders services in the course of his or her practice
9 as an attorney-at-law, and the fees and disbursements of the person,
10 whether paid by the debtor or other person, are not charges or costs
11 and expenses regulated by or subject to the limitations of this
12 chapter. These fees and disbursements shall not be shared, directly
13 or indirectly, with the prorater or check seller.

14 (d) Any transaction in which money or other property is paid
15 to a "joint control agent" for disbursal or use in payment of the
16 cost of labor, materials, services, permits, fees, or other items of
17 expense incurred in construction of improvements upon real
18 property.

19 (e) A merchant-owned credit or creditors association, or a
20 member-owned, member-controlled, or member-directed
21 association whose principal function is that of servicing the
22 community as a reporting agency.

23 (f) Any agency or service subject to Title 2.91 (commencing
24 with Section 1812.500) of Part 4 of Division 3 of the Civil Code,
25 when providing services under that title.

26 (g) Any person licensed under Part 1 (commencing with Section
27 10000) of Division 4 of the Business and Professions Code, when
28 acting in any capacity for which he or she is licensed under that
29 part.

30 (h) A common law or statutory assignment for the benefit of
31 creditors or the operation or liquidation of property or a business
32 enterprise under supervision of a creditor's committee.

33 (i) The services of a person licensed as a certified public
34 accountant or a public accountant in this state, when the person
35 renders services in the course of his or her practice as a certified
36 public accountant or a public accountant, and the fees and
37 disbursements of the person, whether paid by the debtor or other
38 person, are not charges or costs and expenses regulated by or
39 subject to the limitations of this chapter. These fees and

1 disbursements shall not be shared, directly or indirectly, with the
2 proratee or check seller.

3 (j) Any person licensed under Chapter 14 (commencing with
4 Section 1800) of Division 1 or any agent of the person, when
5 selling any check or draft that is drawn by the person and is of the
6 type described in paragraph (3) of subdivision (a) of Section
7 1800.5.

8 (k) Any group of banks each of which is organized under the
9 laws of a nation other than the United States and one or more of
10 which are licensed by the Commissioner of Financial Institutions
11 Services under Article 3 (commencing with Section 1750) of
12 Chapter 13.5 of Division 1, or any agent of the group, when selling
13 any foreign currency traveler's check, as defined in Section 1852,
14 issued by the group. Each bank that is a member of the group is
15 jointly and severally liable to pay the foreign currency traveler's
16 check.

17 (l) Any transaction of the type described in Section 1854.1.

18 *SEC. 166. Section 12104 of the Financial Code is amended to*
19 *read:*

20 12104. A nonprofit community service organization that meets
21 all of the following criteria shall be exempt from any requirements
22 imposed on proratees pursuant to this division:

23 (a) The nonprofit community service organization incorporates
24 in this state or any other state as a nonprofit corporation and
25 operates pursuant to either the Nonprofit Public Benefit
26 Corporation Law, Part 2 (commencing with Section 5110) of
27 Division 2 of Title 1 of the Corporations Code or the Nonprofit
28 Mutual Benefit Corporation Law, Part 3 (commencing with Section
29 7110) of Division 2 of Title 1 of the Corporations Code.

30 (b) The nonprofit community service organization limits its
31 membership to retailers, lenders in the consumer credit field,
32 educators, attorneys, social service organizations, employer and
33 employee organizations, and related groups that serve educational,
34 benevolent, fraternal, religious, charitable, social, or reformatory
35 purposes.

36 (c) The nonprofit community service organization has as its
37 principal functions the following:

38 (1) Consumer credit education.

39 (2) Counseling on consumer credit problems and family budgets.

1 (3) Arranging or administering debt management plans. “Debt
2 management plan” means a method of paying debtor’s obligations
3 in installments on a monthly basis.

4 (4) Arranging or administering debt settlement plans. “Debt
5 settlement plans” means a method of paying debtor’s obligations
6 in a negotiated amount to each creditor on a one-time basis.

7 (d) The nonprofit community service organization receives from
8 a debtor no more than the following maximum amounts to offset
9 the organization’s actual and necessary expenses for the services
10 described in subdivision (c): a one-time sum not to exceed fifty
11 dollars (\$50) for education and counseling combined in connection
12 with debt management or debt settlement services; and for debt
13 management plans, a sum not to exceed 8 percent of the money
14 disbursed monthly, or thirty-five dollars (\$35) per month,
15 whichever is less, and for debt settlement plans a sum not to exceed
16 15 percent of the amount of the debt forgiven for negotiated debt
17 settlement plans. Nonprofit community service organizations shall
18 not require any upfront payments or deposits on debt settlement
19 plans and may only require payment of fees once the debt has been
20 successfully settled. For purposes of this subdivision, a household
21 shall be considered one debtor. The fees allowed pursuant to this
22 subdivision shall be the only fees that may be charged by a
23 nonprofit community service organization for any services related
24 to a debt management plan or a debt settlement plan.

25 (e) The nonprofit community service organization maintains
26 and keeps current and accurate books, records, and accounts
27 relating to its business in accordance with generally accepted
28 accounting principles, and stores them in a readily accessible place
29 for a period of no less than five years from the end of the fiscal
30 year in which any transactions occurred.

31 (f) The nonprofit community service organization deposits any
32 money received from a debtor for the services described in
33 subdivision (c) in a noninterest-bearing trust account in a federally
34 insured state or federal bank, savings bank, savings and loan
35 association, or credit union, which account is maintained
36 specifically for purposes of administering a debt management plan
37 or debt settlement plan. The nonprofit community service
38 organization shall provide the commissioner the following prior
39 to engaging in business in this state and claiming this exemption:

1 (1) A written notice with the name, address, and telephone
2 number of the bank, savings bank, savings and loan association,
3 or credit union where the trust account is maintained, and the name
4 of the account and the account number. The account information
5 required in this paragraph shall be kept confidential pursuant to
6 the laws governing disclosure of public records, including the
7 California Public Records Act, Chapter 3.5 (commencing with
8 Section 6250) of Division 7 of Title 1 of the Government Code,
9 and the rules adopted thereunder.

10 (2) An irrevocable written consent providing that upon the
11 commissioner taking possession of the property and business of
12 the nonprofit community service organization, all books, records,
13 property and business, including trust accounts and any other
14 accounts holding debtors' funds, shall be immediately turned over
15 to the commissioner or receiver appointed pursuant to this division.
16 The consent shall be signed by the nonprofit community service
17 organization and the bank, savings bank, savings and loan
18 association, or credit union where the trust account is maintained.
19 The consent shall be binding upon the nonprofit community service
20 organization and the bank, savings bank, savings and loan
21 association, or credit union, and any objection to it must be raised
22 pursuant to the laws of the State of California and only in the forum
23 in which the proceeding to take possession or appointment of the
24 receiver has been filed. The nonprofit community service
25 organization and the bank, savings bank, savings and loan
26 association, or credit union shall further consent to the jurisdiction
27 of the commissioner for the purpose of any investigation or
28 proceeding under Sections 12105 and 12106 or any other provision
29 of this division. The consent required by this paragraph shall
30 include the name, title, and signature of an official of the bank,
31 savings bank, savings and loan association, or credit union holding
32 the authority to consent on behalf of that institution, and the name,
33 title, and signature of the chief executive officer or president of
34 the nonprofit community service organization.

35 (g) The nonprofit community service organization maintains at
36 all times a surety bond in the amount of twenty-five thousand
37 dollars (\$25,000), issued by an insurer licensed in this state. The
38 bond shall be conditioned upon the obligor faithfully conforming
39 to and abiding by the provisions of Section 12104 of the Financial
40 Code, honestly and faithfully applying all funds received, honestly

1 and faithfully performing all obligations and undertakings required
2 under this section, and paying to the state and to any person all
3 money that becomes due and owing to the state or to any person
4 owed by the obligor of the bond.

5 (h) The nonprofit community service organization reports all
6 of the following to the debtor at least once every three months, or
7 upon the debtor's request, for any debt management plan or debt
8 settlement plan:

9 (1) Total amount received from the debtor.

10 (2) Total amount paid to each creditor.

11 (3) Total amount any creditor has agreed to accept as payment
12 in full on any debt owed by the debtor.

13 (4) Any amount paid to the organization by the debtor.

14 (5) Any amount held in reserve.

15 (i) The nonprofit community service organization submits to
16 the commissioner, at the organization's expense, an audit report
17 containing audited financial statements covering the calendar year
18 or, if the organization has an established fiscal year, then for that
19 fiscal year, within 120 days after the close of the calendar or fiscal
20 year.

21 (j) The nonprofit community service organization submits with
22 the annual financial statements required under subdivision (i) a
23 declaration that conforms to Section 2015.5 of the Code of Civil
24 Procedure, is executed by an official authorized by the board of
25 the organization, and that states that the organization complies
26 with this section. The annual financial statements shall also include
27 a separate written statement that identifies the name, address,
28 contact person, and telephone number of the organization.

29 (k) The nonprofit community service organization maintains
30 accreditation by an independent accrediting organization, including
31 either the Council on Accreditation or the International Standards
32 Organization, with sector certification.

33 (l) The nonprofit community service organization does not
34 engage in any act or practice in violation of Section 17200 or 17500
35 of the Business and Professions Code.

36 (m) The nonprofit community service organization inserts the
37 following statement, in not less than 10-point type, in its debt
38 management plan and debt settlement plan agreements:
39 "Complaints related to this agreement may be directed to the
40 California Department of Corporations *Financial Services*. This

1 nonprofit community service organization has adopted best
2 practices for debt management plans and debt settlement plans,
3 and a copy will be provided upon request.”

4 (n) The nonprofit community service organization adopts and
5 implements on a continuous basis policies or procedures of best
6 practices that are designed to prevent improper debt management
7 or debt settlement practices and prevent theft and misappropriation
8 of funds. Failure to do the following shall constitute improper debt
9 management or debt settlement practices, as applicable:

10 (1) Obtain counselor certification conducted by a nationally
11 recognized third-party certification program that certifies that all
12 of the agency’s counselors receive proper training and are qualified
13 to provide financial assistance prior to performing counseling
14 services in this state.

15 (2) Disburse funds no later than 15 days after receipt of valid
16 funds, or by a scheduled disbursement date, whichever is the
17 greater amount of time.

18 (3) Transmit funds utilizing electronic payment processing when
19 available.

20 (4) Implement an inception date policy, which shall include an
21 agreement that a consumer’s first disbursement pursuant to a debt
22 management plan shall be received within 90 days of agreeing to
23 the debt management plan service. The debt management plan
24 shall include all items described in subdivision (h) and shall be
25 provided to the consumer at the inception date of the plan. A
26 description of best practices of the agency and of the consumer
27 complaint resources shall be issued no later than the first payment
28 date.

29 (5) Respond to and research any complaint initiated by a
30 consumer within five business days of receipt of the complaint.

31 (6) Prohibit a policy requiring debt management plan consumers
32 from being required to utilize additional ancillary services.

33 (7) Provide consumer access to debt management plan services
34 regardless of the consumer’s ability to pay fees related to the debt
35 management plan, lack of creditor participation, or the amount of
36 the consumer’s outstanding debt.

37 (8) Implement policies that specifically prohibit credit
38 counselors from receiving financial incentives or additional
39 compensation based on the outcome of the counseling process.

1 (9) Prohibit the practice of paying referral fees to consumers or
2 other third parties who refer new clients to the agency.

3 (10) Disclose in all written contracts with consumers the portion
4 of funding for the agency that is provided by creditors.

5 (11) Disclose in all written contracts for debt management plans
6 or debt settlement plans that these plans are not suitable for all
7 consumers and that consumers may request information on other
8 options, including, but not limited to, bankruptcy.

9 (12) Fully disclose all services to be provided by the agency
10 and any initial and ongoing fees to be charged by the agency for
11 services, including, but not limited to, contributions to the agency.

12 (13) Prohibit the agency or any affiliate of the agency from
13 purchasing debt from a consumer.

14 (14) Prohibit the agency from offering loans to consumers
15 involving the charging of interest.

16 (15) Prominently disclose in written contracts with consumers
17 of any financial arrangement between the agency and any lender
18 or any provider of financial services if the agency receives any
19 form of compensation for referring consumers to that lender or
20 provider of financial services.

21 (16) Provide professional liability insurance coverage.

22 (17) Provide the debtor a written individualized evaluation of
23 his or her financial status and an initial debt management plan for
24 the debtor's debts with specific recommendations regarding actions
25 the debtor should take.

26 (18) Provide the debtor enrolling in a debt management plan a
27 written reliable estimate of the length of time it will take to
28 complete the plan and identifies the total debt owed to each creditor
29 included in the plan, the proposed payment to each creditor, and
30 any fees that would be charged for administering the plan. The
31 estimate shall be provided prior to receipt of the debtor's first
32 deposit.

33 (o) The nonprofit community service organization provides a
34 copy of the best practices described in subdivision (n) to its debtor,
35 upon request.

36 (p) The nonprofit community service organization resolves in
37 a prompt and reasonable manner complaints from debtors relating
38 to the organization's debt management plans or debt settlement
39 plans.

1 (q) The nonprofit community service organization provides
2 written notice to the commissioner within 30 days of dissolution
3 or termination of engaging in the activities of a prorater, as defined
4 in Section 12002.1.

5 (r) This section shall become inoperative upon the enactment
6 of a statute requiring the licensure and regulation of nonprofit
7 community service organizations providing consumer credit
8 counseling.

9 *SEC. 167. Section 12307.4 of the Financial Code is amended*
10 *to read:*

11 12307.4. Whenever the commissioner has taken possession of
12 the property and business of a licensee the commissioner may
13 petition the superior court for the appointment of a receiver to
14 liquidate the affairs of the licensee. During the time that the
15 commissioner retains possession of the property and business of
16 a licensee the commissioner shall have the same powers and
17 authority with reference to the licensee as are vested in the
18 Commissioner of Financial ~~Institutions~~ *Services* with respect to
19 banks pursuant to Chapter 17 (commencing with Section 3100) of
20 Division 1 and the licensee shall likewise have the same rights to
21 hearings and judicial review as are granted to banks. While in
22 possession of the property and business of a check seller, a receiver
23 shall have the same powers and authority as are vested in the
24 Commissioner of Financial ~~Institutions~~ *Services* while in possession
25 of the property and business of a bank.

26 *SEC. 168. Section 14003 of the Financial Code is amended to*
27 *read:*

28 14003. "Commissioner" means the Commissioner of Financial
29 ~~Institutions~~ *Services* of the State of California.

30 *SEC. 169. Section 14200.1 of the Financial Code is amended*
31 *to read:*

32 14200.1. There is in the Department of Financial ~~Institutions~~
33 *Services*, the Division of Credit Unions. The Division of Credit
34 Unions has charge of the execution of the laws of this state relating
35 to credit unions or to the credit union business.

36 *SEC. 170. Section 14200.2 of the Financial Code is amended*
37 *to read:*

38 14200.2. The Chief Officer of the Division of Credit Unions
39 is the Deputy Commissioner of Financial ~~Institutions~~ *Services* for
40 the Division of Credit Unions. The Deputy Commissioner of

1 ~~Financial-Institutions Services~~ for the Division of Credit Unions
2 shall administer the laws of this state relating to credit unions or
3 the credit union business under the direction of and on behalf of
4 the commissioner. The Deputy Commissioner of Financial
5 ~~Institutions Services~~ for the Division of Credit Unions shall be
6 appointed by the Governor and shall hold office at the pleasure of
7 the Governor. The Deputy Commissioner of Financial-Institutions
8 ~~Services~~ shall receive an annual salary as fixed by the Governor.

9 *SEC. 171. Section 14381 of the Financial Code is amended to*
10 *read:*

11 14381. The Credit Union Advisory Committee shall advise the
12 commissioner and the Deputy Commissioner of Financial
13 ~~Institutions Services~~ for the Division of Credit Unions on matters
14 relating to credit unions or the credit union business.

15 *SEC. 172. Section 17002 of the Financial Code is amended to*
16 *read:*

17 17002. “Commissioner” means the Commissioner of
18 ~~Corporations Financial Services~~.

19 *SEC. 173. Section 17006 of the Financial Code is amended to*
20 *read:*

21 17006. (a) This division does not apply to:

22 (1) Any person doing business under any law of this state or
23 the United States relating to banks, trust companies, building and
24 loan or savings and loan associations, or insurance companies.

25 (2) Any person licensed to practice law in California who has
26 a bona fide client relationship with a principal in a real estate or
27 personal property transaction and who is not actively engaged in
28 the business of an escrow agent.

29 (3) Any person whose principal business is that of preparing
30 abstracts or making searches of title that are used as a basis for the
31 issuance of a policy of title insurance by a company doing business
32 under any law of this state relating to insurance companies.

33 (4) Any *real estate* broker licensed by the ~~Real Estate~~
34 *Commissioner of Financial Services* while performing acts in the
35 course of or incidental to a real estate transaction in which the *real*
36 *estate* broker is an agent or a party to the transaction and in which
37 the *real estate* broker is performing an act for which a real estate
38 license is required.

39 (b) The exemptions provided for in paragraphs (2) and (4) of
40 subdivision (a) are personal to the persons listed, and those persons

1 shall not delegate any duties other than duties performed under
2 the direct supervision of those persons. Notwithstanding the
3 provisions of this subdivision, the exemptions provided for in
4 paragraphs (2) and (4) of subdivision (a) are not available for any
5 arrangement entered into for the purpose of performing escrows
6 for more than one business.

7 *SEC. 174. Section 17210.2 of the Financial Code is amended*
8 *to read:*

9 17210.2. (a) No escrow agent shall disseminate, or cause or
10 permit to be disseminated, in any manner whatsoever, any
11 statement or representation which is false, misleading, or deceptive,
12 or which omits to state material information, or which refers to
13 the supervision of that agent by the State of California or any
14 department or official thereof.

15 (b) A licensed escrow agent, in referring to the corporation's
16 licensure under this law in any written or printed communication
17 or any communication by means of recorded telephone messages
18 or spoken on radio, television, or similar communications media,
19 shall include the following statement: "This escrow company holds
20 ~~California Department of Corporations~~ *Financial Services* Escrow
21 License No. ____."

22 (c) The commissioner may order any person to desist from any
23 conduct which the commissioner finds to be a violation of this
24 section.

25 *SEC. 175. Section 17214 of the Financial Code is amended to*
26 *read:*

27 17214. (a) There is established in the Department of
28 ~~Corporations~~ *Financial Services* an Escrow Law Advisory
29 Committee consisting of 11 members. The members shall consist
30 of the commissioner or his or her designee; the chairman of the
31 board and the immediate past chairman of the board for the Escrow
32 Agents' Fidelity Corporation; the current chairman of the board
33 and the immediate past chairman of the board for the Escrow
34 Institute of California; a person selected by the commissioner to
35 represent a different type of business ownership under this division;
36 a person selected by the commissioner to represent a different type
37 of business specialization; a person selected by the commissioner
38 to represent small businesses operating pursuant to this division;
39 a person selected by the commissioner to represent medium-sized
40 businesses operating pursuant to this division; an attorney at law

1 experienced in escrow matters selected by the commissioner; and
2 a certified public accountant experienced in the escrow business
3 selected by the commissioner.

4 Except for the members from the Escrow Agents' Fidelity
5 Corporation and the Escrow Institute of California, members
6 appointed by the commissioner shall serve for a term of two years.

7 The committee shall meet at least quarterly. The commissioner
8 or his or her designee shall chair the committee. All members shall
9 serve without compensation or reimbursement for expenses.

10 Where the chairman of the board or the immediate past chairman
11 of the board of the Escrow Agents' Fidelity Corporation is the
12 same person, or is unable to serve on the advisory committee, then
13 the commissioner after consultation with the board of directors of
14 the Escrow Agents' Fidelity Corporation, shall choose a member
15 of the board of directors to serve on the committee. Where the
16 president or past president of the Escrow Institute of California is
17 the same person, or is unable to serve on the advisory committee,
18 then the commissioner after consultation with the board of directors
19 of the Escrow Institute of California, shall choose a member of
20 the board of directors to serve on the committee.

21 (b) The purpose of the committee is to assist the commissioner
22 in the implementation of the commissioner's duties under this
23 chapter.

24 *SEC. 176. Section 17303 of the Financial Code is amended to*
25 *read:*

26 17303. "Commissioner" means the Commissioner of
27 ~~Corporations~~ *Financial Services*.

28 *SEC. 177. Section 17311 of the Financial Code is amended to*
29 *read:*

30 17311. (a) Persons licensed pursuant to this division shall
31 maintain a corporation under the Nonprofit Mutual Benefit
32 Corporation Law (Part 3 (commencing with Section 7110) of
33 Division 2 of Title 1 of the Corporations Code) operating under
34 the name Escrow Agents' Fidelity Corporation.

35 (b) The State of California, the Department of ~~Corporations~~
36 *Financial Services*, or any officer, agent, or employee of either
37 shall not be liable in any way for the conduct of Fidelity
38 Corporation, its directors, officers, agents, employees, or members.

39 *SEC. 178. Section 17312 of the Financial Code is amended to*
40 *read:*

1 17312. (a) Each person licensed pursuant to this division who
2 is engaged in the business of receiving escrows specified in
3 subdivision (c) and whose escrow business location is located
4 within the State of California shall participate as a member in
5 Fidelity Corporation in accordance with this chapter and rules
6 established by the board of directors of Fidelity Corporation.
7 Fidelity Corporation shall not deny membership to any escrow
8 agent holding a valid unrevoked license under the Escrow Law
9 who is required to be a member under this subdivision.

10 (b) Upon filing a new application for licensure as required by
11 Section 17201, persons required to be a member of Fidelity
12 Corporation shall file a copy thereof concurrently with Fidelity
13 Corporation. If an application for licensure submitted to Fidelity
14 Corporation contains personal or confidential information, Fidelity
15 Corporation and its board shall maintain this information in
16 confidence to protect the privacy of the information. The copy of
17 the application shall include the three thousand dollar (\$3,000) fee
18 specified in subdivision (a) of Section 17320 and all required
19 Fidelity Corporation Certificates set forth in Sections 17331 and
20 17331.1. Fidelity Corporation shall promptly furnish to the
21 commissioner a compliance letter confirming that the applicant
22 has satisfied the requirements to be a member of Fidelity
23 Corporation.

24 (c) The required membership in Fidelity Corporation shall be
25 limited to those licensees whose escrow business location is located
26 within the State of California and who engage, in whole or in part,
27 in the business of receiving escrows for deposit or delivery in the
28 following types of transactions:

29 (1) Real property escrows, including, but not limited to, the
30 sale, encumbrance, lease, exchange, or transfer of title, and loans
31 or other obligations to be secured by a lien upon real property.

32 (2) Bulk sale escrows, including, but not limited to, the sale or
33 transfer of title to a business entity and the transfer of liquor
34 licenses or other types of business licenses or permits.

35 (3) Fund or joint control escrows, including, but not limited to,
36 transactions specified in Section 17005.1, and contracts specified
37 in Section 10263 of the Public Contract Code.

38 (4) The sale, transfer of title, or refinance escrows for
39 manufactured homes or mobilehomes.

(5) Reservation deposits required under Article 2 (commencing with Section 11010) of Chapter 1 of Part 2 of Division 4 of the Business and Professions Code or by regulation of the Department of ~~Real Estate~~ *Financial Services* to be held in an escrow account.

(6) Escrows for sale, transfer, modification, assignment, or hypothecation of promissory notes secured by deeds of trust.

(d) Coverage required to be provided by Fidelity Corporation under this chapter shall be provided to members only for loss of trust obligations with respect to those types of transactions specified in subdivision (c). If a loss covered by Fidelity Corporation is also covered by a member's general liability, dishonesty, or indemnity policy, or other private insurance policy, then the member's private policy shall first be applied as the primary indemnity to cover the loss. However, the failure of the member's private primary policy to indemnify the member's loss within the time specified for Fidelity Corporation indemnity in subdivision (a) of Section 17314 shall not limit the indemnity obligations of Fidelity Corporation as defined in this chapter. Indemnity coverage for those types of transactions not specified in subdivision (c) shall be provided by escrow agents in accordance with Section 17203.1.

SEC. 179. Section 17320 of the Financial Code is amended to read:

17320. Fidelity Corporation shall establish and maintain the following funds for payment of claims and for payment of costs of administration: the membership fund, the operations fund, and the fidelity fund.

(a) An applicant or a licensee shall, at the time an application is filed for a license, pay to Fidelity Corporation a membership fee of three thousand dollars (\$3,000) for each location for which a license is applied. If the application is denied, withdrawn, or abandoned, Fidelity Corporation may retain two hundred dollars (\$200) from the membership fee to cover costs of administration.

(1) The membership fund shall be reserved for payment of claims which exceed the fidelity fund balance and for payment of extraordinary operational costs.

(2) Any member who, on the effective date of this section, has an account balance which exceeds the three thousand dollars (\$3,000) membership fee times the number of its licensed locations shall be credited in a special reserve account for the excess amount.

1 This balance shall be credited against future assessments made
2 pursuant to subdivision (b) of Section 17321 in an amount not
3 exceeding four hundred dollars (\$400) per licensed location per
4 year. Any member whose account balance is less than three
5 thousand dollars (\$3,000) times the number of its licensed locations
6 shall, on or before December 1, 1988, pay to Fidelity Corporation
7 an amount sufficient to allow the member's account to be
8 maintained at three thousand dollars (\$3,000) times the number
9 of licensed locations. Fidelity Corporation shall provide each
10 member with an accounting of the amounts being reserved for the
11 members' membership account and amounts being held as a special
12 reserve.

13 (3) The membership fee, less any unpaid assessments and related
14 costs, shall be refunded to the member in accordance with Fidelity
15 Corporation's bylaws not less than 30 months and no more than
16 36 months after the effective date of surrender of a license.

17 (4) Any member who does not engage in any escrow transactions
18 pursuant to subdivision (c) of Section 17312 may terminate its
19 membership in Fidelity Corporation by written notice to Fidelity
20 Corporation and the Department of ~~Corporations~~ *Financial*
21 *Services*, as provided in the Fidelity Corporation's bylaws and
22 rules and regulations. The membership fee, less any unpaid
23 assessments and related costs, shall be refunded to the member in
24 accordance with Fidelity Corporation's bylaws not less than 30
25 months and no more than 36 months after the effective date of the
26 member's written request to terminate its membership in Fidelity
27 Corporation. Before a licensee resumes those escrow transactions,
28 it shall first be required to become a member of Fidelity
29 Corporation, as provided in this subdivision.

30 (b) Fidelity Corporation shall prepare, prior to its fiscal year
31 end, an estimated annual operational budget projecting the costs
32 of operations and administration for the succeeding fiscal year,
33 excluding the amount paid for claims and premiums paid for excess
34 coverage bonding. The amount of the assessment shall be 150
35 percent of the budgetary projection. In succeeding years, the
36 assessment shall be adjusted by adding the prior year's deficit or
37 deducting unused surplus from the prior year.

38 (c) Fidelity Corporation shall establish a fidelity fund for the
39 payment of claims and for the payment of the premium for the
40 fidelity bond or insurance policy, if any. All claims shall be paid

1 from the fidelity fund, provided that, to the extent that the fidelity
2 fund balance is not sufficient to pay claims, the claim shall be paid
3 from the membership fund by charging each member's membership
4 account a pro rata share of the excess.

5 (d) All interest earned on the membership fund and the
6 operations fund shall be credited to the fidelity fund.

7 *SEC. 180. Section 17331 of the Financial Code is amended to*
8 *read:*

9 17331. (a) An applicant applying for licensure as an escrow
10 agent under this division is required to apply for a Fidelity
11 Corporation Certificate, prepared and issued by Fidelity
12 Corporation, for each proposed shareholder, officer, director,
13 trustee, manager, or employee who is to be directly or indirectly
14 compensated by the escrow agent, prior to licensure of the escrow
15 agent by the commissioner.

16 (b) A shareholder, officer, director, trustee, manager, or
17 employee of an escrow agent, directly or indirectly compensated
18 by an escrow agent within this state, is required to complete and
19 execute a Fidelity Corporation Certificate application, prepared
20 and issued by Fidelity Corporation, as a condition of his or her
21 employment or entitlement to compensation, before the person
22 may continue the regular discharge of his or her duties, or have
23 access to moneys or negotiable securities belonging to or in the
24 possession of the escrow agent, or draw checks upon the escrow
25 agent or the trust funds of the escrow agent.

26 (c) Fidelity Corporation Certificates may also be known as
27 Escrow Agent's Fidelity Corporation Certificates or EAFC
28 Certificates. The certificate at all times remains the property of
29 Fidelity Corporation, and is not transferable by either a member
30 or employee. The certificate is not a warranty or guarantee by
31 Fidelity Corporation of the integrity, veracity, or competence of
32 the person.

33 (d) An application for a Fidelity Corporation Certificate shall
34 be in writing and in the form prescribed by Fidelity Corporation.
35 The application may include (1) a fee not to exceed fifty dollars
36 (\$50), (2) two passport-size photographs, and (3) a set of fingerprint
37 images and related information using the process established by
38 the Department of Justice for requesting state summary criminal
39 history information, plus the fee charged by the Department of
40 Justice for processing noncriminal applicant fingerprint images

1 and related information, in a manner established by the Department
2 of Justice pursuant to subdivision (l). The Department of Justice
3 shall honor the Fidelity Corporation report request form and issue
4 a report to Fidelity Corporation, notwithstanding any other
5 provision of law or regulation to the contrary. Fidelity Corporation
6 is also entitled to submit a set of fingerprint images and related
7 information in the Department of Justice specified noncriminal
8 applicant fingerprint format for the purpose of requesting and
9 obtaining a report from the Department of Justice, for the officers
10 and employees of Fidelity Corporation. A member shall cause the
11 filing of applications for all existing employees as required by this
12 section within 30 days of written notice by Fidelity Corporation
13 to the member.

14 (e) The application form shall include a provision for binding
15 arbitration to allow for arbitration of any appeal or dispute as to a
16 decision by Fidelity Corporation concerning the certificate, as
17 follows:

18
19 A DISPUTE AS TO WHETHER THE DENIAL OF THIS
20 CERTIFICATE APPLICATION OR ANY SUBSEQUENT
21 SUSPENSION OR REVOCATION OF THE CERTIFICATE IS
22 UNNECESSARY OR UNAUTHORIZED OR WAS
23 IMPROPERLY, NEGLIGENTLY, OR UNLAWFULLY
24 RENDERED, MAY BE DETERMINED BY SUBMISSION TO
25 ARBITRATION AS PROVIDED BY CALIFORNIA LAW, AND
26 NOT BY A LAWSUIT OR RESORT TO COURT PROCESS
27 EXCEPT AS CALIFORNIA LAW PROVIDES FOR JUDICIAL
28 REVIEW OF ARBITRATION PROCEEDINGS OR EXCEPT
29 AS PROVIDED BY SECTION 17331.3 OF THE FINANCIAL
30 CODE. THE APPLICANT MAY, SUBJECT TO AGREEMENT,
31 SUBMIT ANY ISSUE ARISING FROM A DECISION BY
32 FIDELITY CORPORATION TO DENY THIS CERTIFICATE
33 APPLICATION OR TO SUSPEND OR REVOKE THE
34 CERTIFICATE TO BE DECIDED BY BINDING NEUTRAL
35 ARBITRATION. UPON AN AGREEMENT TO SUBMIT TO
36 BINDING NEUTRAL ARBITRATION, THE APPLICANT HAS
37 NO RIGHT TO HAVE ANY DISPUTE CONCERNING THIS
38 CERTIFICATE APPLICATION LITIGATED IN A COURT OR
39 JURY TRIAL NOR ANY JUDICIAL RIGHTS TO DISCOVERY
40 AND APPEAL, EXCEPT AS SPECIFICALLY PROVIDED IN

1 THE ESCROW LAW. ARBITRATION MAY BE COMPELLED
2 AS PROVIDED BY LAW.

3
4 (f) There is no liability on the part of and no cause of action of
5 any nature may arise against Fidelity Corporation or its members,
6 directors, officers, employees, or agents, the State of California,
7 the Department of ~~Corporations~~ *Financial Services*, or any officer,
8 agent, or employee of the state or the Department of ~~Corporations~~
9 *Financial Services* for statements made by Fidelity Corporation
10 in reports or recommendations made pursuant to this division, or
11 for reports or recommendations made pursuant to this division to
12 Fidelity Corporation by its members, directors, officers, employees
13 or agents, the State of California, the Department of ~~Corporations~~
14 *Financial Services*, or any officer, agent, or employee of the state
15 or the Department of ~~Corporations~~ *Financial Services*, unless the
16 information provided is false and the party making the statement
17 or providing the false information does so with knowledge and
18 malice. Reports or recommendations made pursuant to this section,
19 or Section 17331.1, 17331.2, or 17331.3, are not public documents.

20 (g) There is no liability on the part of and no cause of action of
21 any nature may arise against Fidelity Corporation or its members,
22 directors, officers, employees, or agents, the State of California,
23 the Department of ~~Corporations~~ *Financial Services*, or an officer,
24 agent, or employee of the state or the Department of ~~Corporations~~
25 *Financial Services* for the release of any information furnished to
26 Fidelity Corporation pursuant to this section unless the information
27 released is false and the party, including Fidelity Corporation, its
28 members, directors, officers, employees, or agents, the state, the
29 Department of ~~Corporations~~ *Financial Services*, or any officer,
30 agent, or employee of the state or the Department of ~~Corporations~~
31 *Financial Services*, who releases the false information does so
32 with knowledge and malice.

33 (h) There is no liability on the part of and no cause of action of
34 any nature may arise against Fidelity Corporation or its directors,
35 officers, employees, or agents, for any decision to deny an
36 application for a certificate or to suspend or revoke the certificate
37 of any person or for the timing of any decision or the timing of
38 any notice to persons or members thereof, or for any failure to
39 deny an application under subdivision (a) of Section 17331.2. This

1 subdivision does not apply to acts performed in bad faith or with
2 malice.

3 (i) Fidelity Corporation, any member of Fidelity Corporation,
4 an agent of Fidelity Corporation or of its members, or any person
5 who uses any information obtained under this section for any
6 purpose not authorized by this chapter is guilty of a misdemeanor.

7 (j) Section 17331, 17331.1, or 17331.2 does not constitute a
8 restriction or limitation upon the obligation of Fidelity Corporation
9 to indemnify members against loss, as provided in Sections 17310
10 and 17314. The failure to obtain a certificate, the denial of an
11 application for a certificate, or the suspension, cancellation, or
12 revocation of a certificate does not limit the obligation of Fidelity
13 Corporation to indemnify a member against loss.

14 (k) Notwithstanding Section 11105 of the Penal Code, Fidelity
15 Corporation is entitled to receive state summary criminal history
16 information and subsequent arrest notification from the Department
17 of Justice as a result of fingerprint images and related information
18 submitted to the Department of Justice by the Department of
19 ~~Corporations~~ *Financial Services*, pursuant to subdivision (g) of
20 Section 17209, Section 17212.1, and subdivision (d) of Section
21 17414.1, by or on behalf of escrow agents, shareholders, officers,
22 directors, trustees, managers, or employees of an escrow agent,
23 directly or indirectly compensated by an escrow agent. The
24 Department of Justice and Fidelity Corporation shall enter into an
25 agreement to implement this subdivision. The Department of
26 ~~Corporations~~ *Financial Services* shall forward to Fidelity
27 Corporation, weekly, a list of names of individual fingerprints
28 submitted to the Department of Justice.

29 (l) (1) The fingerprint images and related information required
30 pursuant to subdivision (d) shall be submitted by the Department
31 of ~~Corporations~~ *Financial Services* to the Department of Justice,
32 in a manner established by the Department of Justice, for the
33 purposes of obtaining information as to the existence and content
34 of a record of state or federal convictions, state or federal arrests,
35 and information as to the existence of and content of a record of
36 state or federal arrests for which the Department of Justice
37 establishes that the person is free on bail or on his or her own
38 recognizance pending trial or appeal.

39 (2) Upon receipt, the Department of Justice shall forward to the
40 Federal Bureau of Investigation requests for federal summary

1 criminal history information received pursuant to this section. The
2 Department of Justice shall review the information returned from
3 the Federal Bureau of Investigation and compile and disseminate
4 a response to the Department of ~~Corporations~~ *Financial Services*
5 and a fitness determination to Fidelity Corporation pursuant to
6 subdivision (p) of Section 11105 of the Penal Code.

7 (3) The Department of Justice shall charge a fee sufficient to
8 cover the costs of processing the requests pursuant to this
9 subdivision.

10 *SEC. 181. Section 17423.1 of the Financial Code is amended*
11 *to read:*

12 17423.1. (a) (1) Whenever the commissioner takes any
13 enforcement or disciplinary action pursuant to Section 17423, upon
14 the action becoming final the commissioner shall notify the ~~Real~~
15 ~~Estate Commissioner and the Insurance Commissioner~~ of the action
16 or actions taken. The purpose of this notification is to alert the
17 ~~departments~~ *department* that enforcement or disciplinary action
18 has been taken, if the person seeks or obtains employment with
19 entities regulated by the ~~departments~~ *department*.

20 (2) The commissioner shall provide the ~~Real Estate~~
21 ~~Commissioner and the Insurance Commissioner~~, in addition to the
22 notification of the action taken, with a copy of the written
23 accusation, statement of issues, or order issued or filed in the matter
24 and, at the request of the ~~Real Estate Commissioner or Insurance~~
25 ~~Commissioner~~, with any underlying factual material relevant to
26 the enforcement or disciplinary action. Any confidential
27 information provided by the commissioner to the Insurance
28 ~~Commissioner or the Real Estate Commissioner~~ shall not be made
29 public pursuant to this section. Notwithstanding any other provision
30 of law, the disclosure of any underlying factual material to the
31 Insurance Commissioner ~~or the Real Estate Commissioner~~ shall
32 not operate as a waiver of confidentiality or any privilege that the
33 commissioner may assert.

34 (b) The commissioner shall establish and maintain, on the
35 ~~Internet Web site maintained by the Department of Corporations~~
36 ~~Financial Services~~, a separate and readily identifiable database of
37 all persons who have been subject to any enforcement or
38 disciplinary action that triggers the notification requirements of
39 this section. The database shall also contain a direct link to the
40 databases, described in Section 10176.1 of the Business and

1 Professions Code and Section 12414.31 of the Insurance Code and
2 required to be maintained on the *Internet Web-sites site* of the
3 ~~Department of Real Estate and the Department of Insurance;~~
4 ~~respectively,~~ of persons who have been subject to enforcement or
5 disciplinary action for malfeasance or misconduct related to the
6 escrow industry by the Insurance Commissioner ~~and the Real~~
7 ~~Estate Commissioner.~~

8 (c) There shall be no liability on the part of, and no cause of
9 action of any nature shall arise against, the State of California, the
10 Department of ~~Corporations~~ *Financial Services*, the Commissioner
11 of ~~Corporations~~ *Financial Services*, any other state agency, or any
12 officer, agent, employee, consultant, or contractor of the state, for
13 the release of any false or unauthorized information pursuant to
14 this section, unless the release of that information was done with
15 knowledge and malice, or for the failure to release any information
16 pursuant to this section.

17 *SEC. 182. Section 18002 of the Financial Code is amended to*
18 *read:*

19 18002. "Commissioner" means the Commissioner of Financial
20 ~~Institutions~~ *Services* of the State of California.

21 *SEC. 183. Section 18002.5 of the Financial Code is amended*
22 *to read:*

23 18002.5. "Department" means the Department of Financial
24 ~~Institutions~~ *Services*.

25 *SEC. 184. Section 18339 of the Financial Code is amended to*
26 *read:*

27 18339. As of the operative date of this section:

28 (a) There is established an Industrial Loan Account in the
29 Financial Institutions Fund in the State Treasury.

30 (b) All money on deposit with the Treasurer in the State
31 Corporations Fund that has been received or collected by the
32 Commissioner of ~~Corporations~~ *Financial Services* under this
33 division or any other law relating to industrial loan companies or
34 the industrial loan business, all other assets of the State
35 Corporations Fund that have been acquired by the Commissioner
36 of ~~Corporations~~ *Financial Services* under this division or any other
37 law relating to industrial loan companies or the industrial loan
38 business, and all liabilities of the State Corporations Fund that
39 have been incurred under this division or any other law relating

1 to industrial loan companies or the industrial loan business shall
2 be transferred to the Industrial Loan Account.

3 *SEC. 185. Section 18427.9 of the Financial Code is amended*
4 *to read:*

5 18427.9. There shall be exempted from the provisions of
6 Section 18427.1 all of the following:

7 (a) (1) Any offer, not involving a public offering, to an affiliate
8 or to a person of the type described in subdivision (i) of Section
9 25102 of the Corporations Code or in the regulations of the
10 Commissioner of ~~Corporations~~ *Financial Services* adopted
11 thereunder.

12 (2) The execution and delivery of an agreement for the sale of
13 securities to any person of the type described in paragraph (1),
14 subject to all of the following:

15 (A) The agreement shall contain substantially the following
16 provision:

17 “The sale of the securities which are the subject of this agreement
18 has not been authorized by a permit issued by the Commissioner
19 of ~~Financial Institutions~~ *Services* of the State of California. The
20 issuance of the securities or the payment or receipt of any part of
21 the consideration therefor prior to the issuance of a permit is
22 unlawful, unless the sale of securities is exempt from Section
23 18427.1 of the California Financial Code. The rights of all parties
24 to this agreement are expressly conditioned upon the issuance of
25 a permit, unless the sale is so exempt.”

26 (B) No part of the purchase price may be paid or received, and
27 none of the securities may be issued, until a permit authorizing the
28 sale of the securities is issued, unless the sale is exempt from
29 Section 18427.1.

30 (b) Any transaction or security which the commissioner by
31 regulation or order exempts as not being comprehended within the
32 purposes of this article and the regulation of which he or she finds
33 is not necessary or appropriate in the public interest or for the
34 protection of investors.

35 *SEC. 186. Section 18596 of the Financial Code is amended to*
36 *read:*

37 18596. A premium finance company may issue or sell
38 investment certificates only (a) to its customers directly in
39 connection with the financing of premiums for such customers,
40 provided that the aggregate finance charges, including interest paid

1 or not paid on such investment certificates, do not exceed those
2 charges permitted under Section 18626 and (b) to any such
3 institutional investors, governmental agency or instrumentality as
4 the Commissioner of ~~Corporations~~ *Financial Services* may
5 designate by rule.

6 *SEC. 187. Section 22005 of the Financial Code is amended to*
7 *read:*

8 22005. “Commissioner” means the Commissioner of
9 ~~Corporations~~ *Financial Services*.

10 *SEC. 188. Section 22159.5 of the Financial Code is amended*
11 *to read:*

12 22159.5. (a) The commissioner may, as he or she deems
13 necessary, require licensees to provide reports concerning their
14 residential mortgage loan servicing activities, including, but not
15 limited to, information similar to that collected in connection with
16 the Mortgage Servicers Survey, first published by the Department
17 of ~~Corporations~~ *Financial Services, successor to the Department*
18 *of Corporations* in December 2007. The commissioner is
19 additionally authorized to seek and accept information provided
20 on a voluntary basis by residential mortgage loan servicers not
21 subject to the commissioner’s jurisdiction. The commissioner shall
22 post only aggregated survey results on the department’s Internet
23 Web site, and shall note the number of loan servicers submitting
24 data included in the aggregated totals and the estimated percentage
25 of outstanding mortgage loans to Californians that are serviced by
26 these loan servicers, to the extent information on the number of
27 outstanding loans is available from a reliable source. Nothing in
28 this section is intended to reduce or change the commissioner’s
29 authority to request and demand reports under Sections 22150 and
30 22159.

31 (b) For purposes of this section, “mortgage loan servicing
32 activity” means receiving more than three installment payments
33 of principal, interest, or other amounts placed in escrow, pursuant
34 to the terms of a mortgage loan, and performing services relating
35 to that receipt or the enforcement of its receipt, on behalf of the
36 holder of the note evidencing that loan.

37 *SEC. 189. Section 22160 of the Financial Code is amended to*
38 *read:*

39 22160. The commissioner shall make and file annually with
40 the Department of ~~Corporations~~ *Financial Services* as a public

1 record a composite of the annual reports and any comments on the
2 reports that he or she deems to be in the public interest.

3 *SEC. 190. Section 22304 of the Financial Code is amended to*
4 *read:*

5 22304. As an alternative to the charges authorized by Section
6 22303, a licensee may contract for and receive charges at the
7 greater of the following:

8 (a) A rate not exceeding 1.6 percent per month on the unpaid
9 principal balance.

10 (b) A rate not exceeding five-sixths of 1 percent per month plus
11 a percentage per month equal to one-twelfth of the annual rate
12 prevailing on the 25th day of the second month of the quarter
13 preceding the quarter in which the loan is made, as established by
14 the Federal Reserve Bank of San Francisco, on advances to member
15 banks under Sections 13 and 13a of the Federal Reserve Act, as
16 now in effect or hereafter from time to time amended, or if there
17 is no single determinable rate for advances, the closest counterpart
18 of this rate as shall be determined by the Commissioner of
19 Financial ~~Institutions~~ *Services*. Charges shall be calculated on the
20 unpaid principal balance.

21 (c) This section does not apply to any loan of a bona fide
22 principal amount of two thousand five hundred dollars (\$2,500)
23 or more as determined in accordance with Section 22251.

24 *SEC. 191. Section 23001 of the Financial Code is amended to*
25 *read:*

26 23001. As used in this division, the following terms have the
27 following meanings:

28 (a) “Deferred deposit transaction” means a transaction whereby
29 a person defers depositing a customer’s personal check until a
30 specific date, pursuant to a written agreement for a fee or other
31 charge, as provided in Section 23035.

32 (b) “Commissioner” means the Commissioner of ~~Corporations~~
33 *Financial Services*.

34 (c) “Department” means the Department of ~~Corporations~~
35 *Financial Services*.

36 (d) “Licensee” means any person who offers, originates, or
37 makes a deferred deposit transaction, who arranges a deferred
38 deposit transaction for a deferred deposit originator, who acts as
39 an agent for a deferred deposit originator, or who assists a deferred
40 deposit originator in the origination of a deferred deposit

1 transaction. However, “licensee” does not include a state or
2 federally chartered bank, thrift, savings association, industrial loan
3 company, or credit union. “Licensee” also does not include a retail
4 seller engaged primarily in the business of selling consumer goods,
5 including consumables, to retail buyers that cashes checks or issues
6 money orders for a minimum fee not exceeding two dollars (\$2)
7 as a service to its customers that is incidental to its main purpose
8 or business. “Licensee” also does not include an employee regularly
9 employed by a licensee at the licensee’s place of business. An
10 employee, when acting under the scope of the employee’s
11 employment, shall be exempt from any other law from which the
12 employee’s employer is exempt.

13 (e) “Person” means an individual, a corporation, a partnership,
14 a limited liability company, a joint venture, an association, a joint
15 stock company, a trust, an unincorporated organization, a
16 government entity, or a political subdivision of a government
17 entity.

18 (f) “Deferred deposit originator” means a person who offers,
19 originates, or makes a deferred deposit transaction.

20 *SEC. 192. Section 23070 of the Financial Code is amended to*
21 *read:*

22 23070. (a) The Legislature finds and declares that it is in the
23 public interest for the administration and enforcement of this
24 division to be undertaken by the Department of ~~Corporations~~
25 *Financial Services*.

26 (b) It is therefore the intent of the Legislature to transfer the
27 existing responsibilities relating to administration and enforcement
28 of check cashers that engage in activities subject to this division
29 from the Department of Justice to the Department of ~~Corporations~~
30 *Financial Services*.

31 *SEC. 193. Section 23071 of the Financial Code is amended to*
32 *read:*

33 23071. The Commissioner of ~~Corporations~~ *Financial Services*
34 and the Department of ~~Corporations~~ *Financial Services* shall
35 succeed to, and are vested with, all duties, powers, purposes,
36 responsibilities, and jurisdiction of the Department of Justice as
37 they relate to check cashers who engage in the activities subject
38 to this division.

39 *SEC. 194. Section 23072 of the Financial Code is amended to*
40 *read:*

1 23072. The Department of ~~Corporations~~ *Financial Services*
2 may use the unexpended balance of funds available for use in
3 connection with the performance of duties of the Department of
4 Justice to which the Department of ~~Corporations~~ *Financial Services*
5 succeeds pursuant to Section 23071.

6 *SEC. 195. Section 23073 of the Financial Code is amended to*
7 *read:*

8 23073. All officers and employees of the Department of Justice
9 who, on the operative date of this division, are performing any
10 duty, power, purpose, responsibility, or jurisdiction to which the
11 Department of ~~Corporations~~ *Financial Services* succeeds, and who
12 are serving in the civil service, other than as temporary employees
13 or persons in positions exempted from civil service, shall be
14 transferred to the Department of ~~Corporations~~ *Financial Services*.
15 The status, position, and rights of those persons shall not be
16 affected by the transfer and shall be retained by those persons as
17 officers and employees of the Department of ~~Corporations~~
18 *Financial Services*, pursuant to Part 2 (commencing with Section
19 18500) of Division 5 of Title 2 of the Government Code.

20 *SEC. 196. Section 23074 of the Financial Code is amended to*
21 *read:*

22 23074. The Department of ~~Corporations~~ *Financial Services*
23 shall have possession and control of all records, criminal history
24 information, papers, equipment, supplies, moneys, funds,
25 appropriations, licenses, permits, contracts, claims, judgments,
26 land, and other property, real or personal, connected with the
27 administration of, or held for the benefit or use of, the Department
28 of Justice for the performance of the functions transferred to the
29 Department of ~~Corporations~~ *Financial Services* pursuant to Section
30 23071.

31 *SEC. 197. Section 23102 of the Financial Code is amended to*
32 *read:*

33 23102. The deferred deposits made pursuant to a permit issued
34 under Section 1789.37 of the Civil Code prior to December 31,
35 2004, shall be subject to and enforced to the extent valid under
36 Sections 1789.30 to 1789.37, inclusive, of the Civil Code, as if
37 those sections were not repealed. Any regulation, order, or other
38 action adopted, prescribed, taken, or performed by the Department
39 of Justice or by an officer of that department in connection with
40 deferred deposit transactions made prior to December 31, 2004,

1 shall continue to apply to those transactions. No suit, action, or
2 other proceeding lawfully commenced by or against the Department
3 of Justice or any other officer of the state in relation to deferred
4 deposit transactions made prior to December 31, 2004, shall abate
5 by reason of the transfer of authority concerning deferred deposit
6 transactions to the Department of ~~Corporations~~ *Financial Services*
7 pursuant to Section 23071.

8 *SEC. 198. Section 28000 of the Financial Code is amended to*
9 *read:*

10 28000. (a) Pursuant to the authority contained in Section 1 of
11 Article XV of the State Constitution, and subject to subdivision
12 (b), educational institutions of collegiate grade are authorized to
13 make loans or forbearances to finance student educational expenses
14 including tuition, room, and board, and other costs of attendance
15 or living at the institution, at rates not to exceed the higher of:

16 (1) Ten percent per annum.

17 (2) Five percent per annum plus the rate established by the
18 Federal Reserve Bank of San Francisco on advances to member
19 banks under Sections 13 and 13(a) of the Federal Reserve Act as
20 now in effect or hereafter from time to time amended or, if there
21 is no such single determinable rate of advances, the closest
22 counterpart of this rate as shall be designated by the Commissioner
23 of ~~Financial Institutions~~ *Services* of the State of California unless
24 some other person or agency is delegated such authority by the
25 Legislature. The date of determining the applicable rate established
26 by the Federal Reserve ~~bank~~ *Bank* shall be the 25th day of the
27 month preceding the earlier of the date of execution of the contract
28 to make the loan or forbearance, or the date of making the loan or
29 forbearance.

30 (b) Where the institution has obtained a loan specifically in
31 order to make loans to finance student educational expenses, the
32 rate of interest shall not exceed the lower of:

33 (1) The rate determined pursuant to subdivision (a).

34 (2) One percentage point in excess of the interest rate imposed
35 upon the loan made to the institution, as of the date of execution
36 of the contract to make the student loan to such extent the foregoing
37 creates and authorizes a class of exempt persons pursuant to Section
38 1 of Article XV of the Constitution.

39 (c) Solely with respect to loans or forbearances made by
40 educational institutions of collegiate grade to their faculty or staff,

1 secured by real property consisting of a residential dwelling, these
2 institutions are hereby declared to be an exempt class of persons
3 as this term is used in Section 1 of Article XV of the Constitution.

4 *SEC. 199. Section 30002 of the Financial Code is amended to*
5 *read:*

6 30002. “Commissioner” means the Commissioner of
7 ~~Corporations~~ *Financial Services*.

8 *SEC. 200. Section 30005 of the Financial Code is amended to*
9 *read:*

10 30005. This division does not apply to:

11 (a) A securities depository which is operated by a corporation,
12 all of the capital stock (other than directors’ qualifying shares, if
13 any) of which is held by or for a national securities exchange or
14 association registered under a statute of the United States such as
15 the Securities Exchange Act of 1934, or by a corporation all of the
16 capital stock (other than directors’ qualifying shares, if any) of
17 which is held by or for such a wholly owned subsidiary of a
18 registered national securities exchange.

19 (b) A securities depository which is registered with the Securities
20 and Exchange Commission pursuant to any provision of federal
21 law or which is regulated by the Comptroller of the Currency, the
22 Federal Reserve Board, or the Federal Deposit Insurance
23 Corporation pursuant to any provision of federal law, or which is
24 regulated by the Commissioner of ~~Financial Institutions~~ *Services*
25 under Division 1 (commencing with Section 99) ~~of the Financial~~
26 ~~Code~~.

27 *SEC. 201. Section 30217 of the Financial Code is amended to*
28 *read:*

29 30217. The commissioner may from time to time make, amend,
30 and rescind such rules, forms, and orders as are necessary to carry
31 out the provisions of this law, including rules defining any terms,
32 whether or not used in this law, insofar as the definitions are not
33 inconsistent with the provisions of this law. For the purposes of
34 rules and forms, the commissioner may classify persons and matters
35 within his jurisdiction and may prescribe different requirements
36 for different classes. The commissioner may in his discretion waive
37 any requirement of any rule or form in situations where in his
38 opinion such requirement is not necessary in the public interest or
39 for the protection of investors. All rules of the commissioner other
40 than those relating solely to the internal administration of the

1 Department of ~~Corporations~~ *Financial Services* shall be made,
2 amended, or rescinded in accordance with the provisions of Chapter
3 4.5 (commencing with Section 11371) of Part 1 of Division 3 of
4 Title 2 of the Government Code.

5 *SEC. 202. Section 31055 of the Financial Code is amended to*
6 *read:*

7 31055. “Commissioner” means the Commissioner of Financial
8 ~~Institutions~~ *Services* or any person to whom the Commissioner of
9 Financial ~~Institutions~~ *Services* delegates the authority to act for
10 him or her in the particular matter.

11 *SEC. 203. Section 33045.5 of the Financial Code is amended*
12 *to read:*

13 33045.5. “Commissioner” means the Commissioner of
14 Financial ~~Institutions~~ *Services* or any person to whom the
15 Commissioner of Financial ~~Institutions~~ *Services* delegates the
16 authority to act for the Commissioner of Financial ~~Institutions~~
17 *Services* in this matter.

18 *SEC. 204. Section 33785 of the Financial Code is amended to*
19 *read:*

20 33785. No licensee shall appoint or continue as a California
21 agent any person whom the Commissioner of ~~Corporations~~
22 *Financial Services* has, pursuant to Section 12301.4, ordered a
23 check seller licensed under Division 3 (commencing with Section
24 12000) to terminate as its agent, unless the Commissioner of
25 ~~Corporations~~ *Financial Services* shall have first, pursuant to
26 Section 12301.4, vacated such order or given his written consent
27 for any check seller licensed under Division 3 to appoint such
28 person as its agent.

29 *SEC. 205. Section 50003 of the Financial Code is amended to*
30 *read:*

31 50003. (a) “Annual audit” means a certified audit of the
32 licensee’s books, records, and systems of internal control performed
33 by an independent certified public accountant in accordance with
34 generally accepted accounting principles and generally accepted
35 auditing standards.

36 (b) “Borrower” means the loan applicant.

37 (c) “Buy” includes exchange, offer to buy, or solicitation to
38 buy.

39 (d) “Commissioner” means the Commissioner of ~~Corporations~~
40 *Financial Services*.

(e) “Control” means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a licensee under this division, whether through voting or through the ownership of voting power of an entity that possesses voting power of the licensee, or otherwise. Control is presumed to exist if a person, directly or indirectly, owns, controls, or holds 10 percent or more of the voting power of a licensee or of an entity that owns, controls, or holds, with power to vote, 10 percent or more of the voting power of a licensee. No person shall be deemed to control a licensee solely by reason of his or her status as an officer or director of the licensee.

(f) “Engage in the business” means the dissemination to the public, or any part of the public, by means of written, printed, or electronic communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communications media, of any information relating to the making of residential mortgage loans, the servicing of residential mortgage loans, or both. “Engage in the business” also means, without limitation, making residential mortgage loans or servicing residential mortgage loans, or both.

(g) “Exempt person” means any of the following:

(1) Any bank, trust company, insurance company, or industrial loan company doing business under the authority of or in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States that is authorized to transact business in this state.

(2) A federally chartered savings and loan association, federal savings bank, or federal credit union that is authorized to transact business in this state.

(3) A savings and loan association, savings bank, or credit union organized under the laws of this or any other state that is authorized to transact business in this state.

(4) A person engaged solely in business, commercial, or agricultural mortgage lending.

(5) A wholly owned service corporation of a savings and loan association or savings bank organized under the laws of this state or the wholly owned service corporation of a federally chartered savings and loan association or savings bank that is authorized to transact business in this state.

1 (6) Any person making residential mortgage loans with his, her,
2 or its own funds for his, her, or its own investment without intent
3 to resell more than eight residential loans in any one calendar year.

4 (7) An agency, or other instrumentality of the federal
5 government, or state or municipal government.

6 (8) An employee or employer pension plan making residential
7 mortgage loans only to its participants, or a person making those
8 loans only to its employees or the employees of a holding company,
9 owner who controls that person, affiliate, or subsidiary of that
10 person.

11 (9) A person acting in a fiduciary capacity conferred by the
12 authority of a court.

13 (10) A real estate broker licensed under California law, when
14 making, arranging, selling, or servicing a residential loan.

15 (11) A California finance lender licensed under Division 9
16 (commencing with Section 22000), when acting under the authority
17 of that license.

18 (12) A trustee under a deed of trust pursuant to the Civil Code,
19 when collecting delinquent loan payments, interest, or other loan
20 amounts, or performing other acts in a judicial or nonjudicial
21 foreclosure proceeding.

22 (h) "In this state" means any activity of a person relating to
23 making or servicing a residential mortgage loan that originates
24 from this state and is directed to persons outside this state, or that
25 originates from outside this state and is directed to persons inside
26 this state, or that originates inside this state and is directed to
27 persons inside this state, or that leads to the formation of a contract
28 and the offer or acceptance thereof is directed to a person in this
29 state (whether from inside or outside this state and whether the
30 offer was made inside or outside the state).

31 (i) "Institutional investor" means the following:

32 (1) The United States or any state, district, territory, or
33 commonwealth thereof, or any city, county, city and county, public
34 district, public authority, public corporation, public entity, or
35 political subdivision of a state, district, territory, or commonwealth
36 of the United States, or any agency or other instrumentality of any
37 one or more of the foregoing, including, by way of example, the
38 Federal National Mortgage Association and the Federal Home
39 Loan Mortgage Corporation.

(2) Any bank, trust company, savings bank or savings and loan association, credit union, industrial bank or industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or insurance company, or subsidiary or affiliate of one of the preceding entities, doing business under the authority of or in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(3) Trustees of pension, profit-sharing, or welfare funds, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars (\$15,000,000), except pension, profit-sharing, or welfare funds of a licensee or its affiliate, self-employed individual retirement plans, or individual retirement accounts.

(4) A corporation or other entity with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or a wholly owned subsidiary of that corporation or entity, provided that the purchaser represents either of the following:

(A) That it is purchasing for its own account for investment and not with a view to, or for sale in connection with, any distribution of a promissory note.

(B) That it is purchasing for resale pursuant to an exemption under Rule 144A (17 C.F.R. 230.144A) of the Securities and Exchange Commission.

(5) An investment company registered under the Investment Company Act of 1940; or a wholly owned and controlled subsidiary of that company, provided that the purchaser makes either of the representations provided in paragraph (4).

(6) A person licensed to make residential mortgage loans under this law or an affiliate or subsidiary of that person.

(7) Any person who is licensed as a securities broker or securities dealer under any law of this state, or of the United States, or any employee, officer or agent of that person, if that person is acting within the scope of authority granted by that license or an affiliate or subsidiary controlled by that broker or dealer, in connection with a transaction involving the offer, sale, purchase, or exchange of one or more promissory notes secured directly or indirectly by liens on real property or a security representing an ownership interest in a pool of promissory notes secured directly or indirectly by liens on real property, and the offer and sale of

1 those securities is qualified under the California Corporate
2 Securities Law of 1968 or registered under federal securities laws,
3 or exempt from qualification or registration.

4 (8) A licensed real estate broker selling the loan to an
5 institutional investor specified in paragraphs (1) to (7), inclusive,
6 or paragraph (9) or (10).

7 (9) A business development company as defined in Section
8 2(a)(48) of the Investment Company Act of 1940 or a Small
9 Business Investment Company licensed by the United States Small
10 Business Administration under Section 301(c) or (d) of the Small
11 Business Investment Act of 1958.

12 (10) A syndication or other combination of any of the foregoing
13 entities that is organized to purchase a promissory note.

14 (11) A trust or other business entity established by an
15 institutional investor for the purpose of issuing or facilitating the
16 issuance of securities representing undivided interests in, or rights
17 to receive payments from or to receive payments primarily from,
18 a pool of financial assets held by the trust or business entity,
19 provided that all of the following apply:

20 (A) The business entity is not a sole proprietorship.

21 (B) The pool of assets consists of one or more of the following:

22 (i) Interest-bearing obligations.

23 (ii) Other contractual obligations representing the right to receive
24 payments from the assets.

25 (iii) Surety bonds, insurance policies, letters of credit, or other
26 instruments providing credit enhancement for the assets.

27 (C) The securities will be either one of the following:

28 (i) Rated as “investment grade” by Standard and Poor’s
29 Corporation or Moody’s Investors Service, Inc. “Investment grade”
30 means that the securities will be rated by Standard and Poor’s
31 Corporation as AAA, AA, A, or BBB or by Moody’s Investors
32 Service, Inc. as Aaa, Aa, A, or Baa, including any of those ratings
33 with “+” or “—” designation or other variations that occur within
34 those ratings.

35 (ii) Sold to an institutional investor.

36 (D) The offer and sale of the securities is qualified under the
37 California Corporate Securities Law of 1968 or registered under
38 federal securities laws, or exempt from qualification or registration.

39 (j) “Institutional lender” means the following:

(1) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or other instrumentality of any one or more of the foregoing, including, by way of example, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(2) Any bank, trust company, savings bank or savings and loan association, credit union, industrial loan company, or insurance company, or service or investment company that is wholly owned and controlled by one of the preceding entities, doing business under the authority of and in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(3) Any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation.

(4) A person licensed to make residential mortgage loans under this law.

(k) “Law” means the California Residential Mortgage Lending Act.

(l) “Lender” means a person that (1) is an approved lender for the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, (2) directly makes residential mortgage loans, and (3) makes the credit decision in the loan transactions.

(m) “Licensee” means, depending on the context, a person licensed under either Chapter 2 (commencing with Section 50120) or Chapter 3 (commencing with Section 50130).

(n) “Makes or making residential mortgage loans” or “mortgage lending” means processing, underwriting, or as a lender using or advancing one’s own funds, or making a commitment to advance one’s own funds, to a loan applicant for a residential mortgage loan.

(o) “Mortgage loan,” “residential mortgage loan,” or “home mortgage loan” means a federally regulated mortgage loan as defined in Section 3500.2 of Title 24 of the Code of Federal

1 Regulations, or a loan made to finance construction of a one to
2 four family dwelling.

3 (p) “Mortgage servicer” or “residential mortgage loan servicer”
4 means a person that (1) is an approved servicer for the Federal
5 Housing Administration, Veterans Administration, Farmers Home
6 Administration, Government National Mortgage Association,
7 Federal National Mortgage Association, or Federal Home Loan
8 Mortgage Corporation, and (2) directly services or offers to service
9 mortgage loans.

10 (q) “Net worth” has the meaning set forth in Section 50201.

11 (r) “Own funds” means (1) cash, corporate capital, or warehouse
12 credit lines at commercial banks, savings banks, savings and loan
13 associations, industrial loan companies, or other sources that are
14 liability items on a lender’s financial statements, whether secured
15 or unsecured, or (2) a lender’s affiliate’s cash, corporate capital,
16 or warehouse credit lines at commercial banks or other sources
17 that are liability items on the affiliate’s financial statements,
18 whether secured or unsecured. “Own funds” does not include funds
19 provided by a third party to fund a loan on condition that the third
20 party will subsequently purchase or accept an assignment of that
21 loan.

22 (s) “Person” means a natural person, a sole proprietorship, a
23 corporation, a partnership, a limited liability company, an
24 association, a trust, a joint venture, an unincorporated organization,
25 a joint stock company, a government or a political subdivision of
26 a government, and any other entity.

27 (t) “Residential real property” or “residential real estate” means
28 real property located in this state that is improved by a one-to-four
29 family dwelling.

30 (u) “Service” or “servicing” means receiving more than three
31 installment payments of principal, interest, or other amounts placed
32 in escrow, pursuant to the terms of a mortgage loan and performing
33 services by a licensee relating to that receipt or the enforcement
34 of its receipt, on behalf of the holder of the note evidencing that
35 loan.

36 (v) “Sell” includes exchange, offer to sell, or solicitation to sell.

37 *SEC. 206. Section 50303 of the Financial Code is amended to*
38 *read:*

39 50303. Neither the commissioner nor any employee of the
40 Department of Corporations *Financial Services* shall be precluded

1 from obtaining a residential mortgage loan from a lender licensed
2 under this division, subject to the rules that may be adopted
3 hereunder or pursuant to other proper authority.

4 *SEC. 207. Section 50307.1 of the Financial Code is amended*
5 *to read:*

6 50307.1. The commissioner may, as he or she deems necessary,
7 require licensees to provide reports concerning their residential
8 mortgage loan servicing activities, including, but not limited to,
9 information similar to that collected in connection with the
10 Mortgage Servicers Survey, first published by the Department of
11 ~~Corporations~~ *Financial Services* in December 2007. The
12 commissioner is additionally authorized to seek and accept
13 information provided on a voluntary basis by residential mortgage
14 loan servicers not subject to the commissioner's jurisdiction. The
15 commissioner shall post only aggregated survey results on the
16 department's Internet Web site, and shall note the number of loan
17 servicers submitting data included in the aggregated totals and the
18 estimated percentage of outstanding mortgage loans to Californians
19 that are serviced by these loan servicers, to the extent information
20 on the number of outstanding loans is available from a reliable
21 source. Nothing in this section is intended to reduce or change the
22 commissioner's authority to request and demand reports under
23 Section 50307.

24 *SEC. 208. Section 50602 of the Financial Code is amended to*
25 *read:*

26 50602. This division is repealed on January 1, 1996, unless the
27 following two conditions are met. First, the Commissioner of
28 ~~Corporations~~ *Financial Services* must receive, on or before March
29 1, 1995, from no fewer than 150 persons, a notice of intention to
30 file an application for licensure as a residential mortgage lender
31 or residential mortgage loan servicer, accompanied by the
32 application filing fee and an annual financial report for calendar
33 year 1994 that meets the requirements of subdivision (a) of Section
34 50401. Second, the Legislature shall appropriate money for the
35 implementation of this division to the Department of ~~Corporations~~
36 *Financial Services* from Item 2180-001-067 of the 1995-96 Budget
37 Act. If the above two conditions are not met, all persons who have
38 paid fees or assessments under this division shall receive a refund
39 prior to the date of repeal.

1 *SEC. 208. Section 50702 of the Financial Code is amended to*
2 *read:*

3 50702. (a) The annual report required by Section 50401(a)
4 shall include both of the following:

5 (1) The number and the aggregate principal amount of closed
6 residential mortgage loans secured by residential real estate in
7 which the licensee provides brokerage services, as defined in this
8 chapter.

9 (2) The number and aggregate principal amount of residential
10 mortgage loans made by the licensee under this division.

11 (b) The sum total of the aggregate principal loan amounts
12 reported in paragraphs (1) and (2) of subdivision (a) shall be
13 deemed the aggregate principal amount of mortgage loans secured
14 by residential real property originated by the licensee, for purposes
15 of determining a licensee's annual assessment under subdivision
16 (a) of Section 50401.

17 (c) The commissioner shall provide copies of the annual reports
18 required by subdivision (a) of Section 50401 to the Department
19 of ~~Real Estate~~ *Financial Services* upon request of the ~~Real Estate~~
20 Commissioner of *Financial Services*.

21 *SEC. 210. Section 13975 of the Government Code is amended*
22 *to read:*

23 13975. The Business and Transportation Agency in state
24 government is hereby renamed the Business, Transportation and
25 Housing Agency. The agency consists of the State Department of
26 Alcoholic Beverage Control, the Department of the California
27 Highway Patrol, ~~the Department of Corporations~~, the Department
28 of Housing and Community Development, the Department of
29 Motor Vehicles, ~~the Department of Real Estate~~, the Department
30 of Transportation, the Department of Financial ~~Institutions~~
31 *Services*, the Department of Managed Health Care, and the Board
32 of Pilot Commissioners for the Bays of San Francisco, San Pablo,
33 and Suisun; and the California Housing Finance Agency is also
34 located within the Business, Transportation and Housing Agency,
35 as specified in Division 31 (commencing with Section 50000) of
36 the Health and Safety Code.

37 ~~SEC. 2. It is the intent of the Legislature to do all of the~~
38 ~~following:~~

39 ~~(a) Abolish the Department of Corporations (DOC), the~~
40 ~~Department of Financial Institutions (DFI), the Department of Real~~

1 Estate (DRE), and the Office of Real Estate Appraisers (OREA)
2 in the Business, Transportation and Housing Agency.

3 (b) ~~Create a new Department of Financial Services (DFS) in~~
4 ~~the Business, Transportation and Housing Agency.~~

5 (e) ~~Designate the chief officer of DFS as the Commissioner of~~
6 ~~Financial Services.~~

7 (d) ~~Cause DFS and the Commissioner of Financial Services to~~
8 ~~succeed to and be vested with all the duties, powers, purposes,~~
9 ~~responsibilities, and jurisdiction currently vested in DOC, DFI,~~
10 ~~DRE, and OREA, and the Commissioner of Corporations, the~~
11 ~~Commissioner of Financial Institutions, the Commissioner of Real~~
12 ~~Estate, and the Director of Real Estate Appraisers.~~

13 (e) ~~Authorize the Controller to transfer funds from DOC, DFI,~~
14 ~~DRE, and OREA to DFS.~~

15 (f) ~~Consolidate the operations and licensing frameworks of~~
16 ~~DOC, DFI, DRE, and OREA and transfer them to DFS and,~~
17 ~~specifically, require DFS to regulate the following persons, entities,~~
18 ~~and transactions currently subject to regulation and oversight by,~~
19 ~~or subject to the jurisdiction of, DOC, DFI, DRE, and OREA:~~

20 (1) ~~Broker-dealers and the agents or registered representatives~~
21 ~~of broker-dealers (Chapter 2 (commencing with Section 25210)~~
22 ~~of Part 3 of Division 1 of Title 4 of the Corporations Code).~~

23 (2) ~~Investment advisers and investment adviser representatives~~
24 ~~or associated persons (Chapter 3 (commencing with Section 25230)~~
25 ~~of Part 3 of Division 1 of Title 4 of the Corporations Code).~~

26 (3) ~~Capital access companies (Division 3 (commencing with~~
27 ~~Section 28000) of Title 4 of the Corporations Code).~~

28 (4) ~~The Franchise Investment Law (Division 5 (commencing~~
29 ~~with Section 31000) of Title 4 of the Corporations Code).~~

30 (5) ~~Banks and trust companies (Division 1 (commencing with~~
31 ~~Section 99) of the Financial Code).~~

32 (6) ~~Foreign banks (Chapter 13.5 (commencing with Section~~
33 ~~1700) of Division 1 of the Financial Code).~~

34 (7) ~~Money transmitters (Chapter 14 (commencing with Section~~
35 ~~1800) of Division 1 of the Financial Code).~~

36 (8) ~~Issuers of travelers checks (Chapter 14A (commencing with~~
37 ~~Section 1851) of Division 1 of the Financial Code).~~

38 (9) ~~Bank holding companies (Chapter 21 (commencing with~~
39 ~~Section 3700) of Division 1 of the Financial Code).~~

- 1 ~~(10) Checksellers, billpayers, and proraters (Division 3~~
2 ~~(commencing with Section 12000) of the Financial Code).~~
- 3 ~~(11) Credit unions (Division 5 (commencing with Section~~
4 ~~14000) of the Financial Code).~~
- 5 ~~(12) Escrow agents (Division 6 (commencing with Section~~
6 ~~17000) of the Financial Code).~~
- 7 ~~(13) Industrial loan companies (Division 7 (commencing with~~
8 ~~Section 18000) of the Financial Code).~~
- 9 ~~(14) The Finance Lenders Law (Division 9 (commencing with~~
10 ~~Section 22000) of the Financial Code).~~
- 11 ~~(15) Deferred deposit originators (Division 10 (commencing~~
12 ~~with Section 23000) of the Financial Code).~~
- 13 ~~(16) Securities depositories (Division 14 (commencing with~~
14 ~~Section 30000) of the Financial Code).~~
- 15 ~~(17) Business and industrial development corporations (Division~~
16 ~~15 (commencing with Section 31000) of the Financial Code).~~
- 17 ~~(18) Sellers of payment instruments (Division 16 (commencing~~
18 ~~with Section 33000) of the Financial Code).~~
- 19 ~~(19) The California Residential Mortgage Lending Act (Division~~
20 ~~20 (commencing with Section 50000) of the Financial Code).~~
- 21 ~~(20) The Real Estate Law (Part 1 (commencing with Section~~
22 ~~10000) of Division 4 of the Business and Professions Code).~~
- 23 ~~(21) The Subdivided Lands Law (Chapter 1 (commencing with~~
24 ~~Section 11000) of Part 2 of Division 4 of the Business and~~
25 ~~Professions Code).~~
- 26 ~~(22) The Vacation Ownership and Time-Share Act of 2004~~
27 ~~(Chapter 2 (commencing with Section 11210) of Part 2 of Division~~
28 ~~4 of the Business and Professions Code).~~
- 29 ~~(23) The Real Estate Appraisers' Licensing and Certification~~
30 ~~Law (Part 3 (commencing with Section 11302) of Division 4 of~~
31 ~~the Business and Professions Code).~~
- 32 ~~(24) Any other persons, entities, or transactions subject to~~
33 ~~regulation and oversight by, or subject to the jurisdiction of, DOC,~~
34 ~~DFI, DRE, or OREA.~~